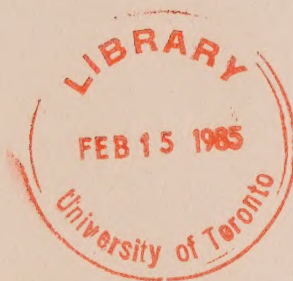


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STANDING COMMITTEE ON PROCEDURAL AFFAIRS

REVIEW OF AGENCIES, BOARDS AND COMMISSIONS:
GEOSCIENCE RESEARCH REVIEW COMMITTEE

TUESDAY, FEBRUARY 5, 1985

Afternoon sitting

STANDING COMMITTEE ON PROCEDURAL AFFAIRS

CHAIRMAN: Treleaven, R. L. (Oxford PC)
VICE-CHAIRMAN: Watson, A. N. (Chatham-Kent PC)
Breaugh, M. J. (Oshawa NDP)
Charlton, B. A. (Hamilton Mountain NDP)
Cureatz, S. L., (Durham East PC)
Edighoffer, H. A. (Perth L)
Kells, M. C. (Humber PC)
Mancini, R. (Essex South L)
McNeil, R. K. (Elgin PC)
Miller, G. I. (Haldimand-Norfolk L)
Rotenberg, D. (Wilson Heights PC)
Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Clerk: Forsyth, S.
Assistant Clerk: Decker, T.

Staff:

Eichmanis, J., Research Officer, Legislative Research Service

From the Ministry of Natural Resources:

Milne, Dr. V., Director, Ontario Geological Survey
Watson, R., Grant Administrator, Exploration Technology Development
Program, Ontario Geological Survey

Witness:

Charteris, S., Chairman, Geoscience Research Review Committee



LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON PROCEDURAL AFFAIRS

Tuesday, February 5, 1985

The committee met at 2:16 p.m. in room 228.

AGENCIES, BOARDS AND COMMISSIONS:
GEOSCIENCE RESEARCH REVIEW COMMITTEE

Mr. Chairman: Gentlemen, having a quorum in place, shall we get going? Perhaps the three witnesses, Mr. Charteris, Dr. Milne and Mr. Watson, could come up to these seats at the end of the gathering. Welcome to the procedural affairs committee. Mr. Charteris, if you are the spokesman, perhaps you would introduce everyone. I understand you have a short opening statement.

Mr. Charteris: Yes, Mr. Chairman. On my right is Dr. Vic Milne, director of the Ontario Geological Survey, and on my left is Mr. Robert Watson, who is co-ordinator and administrator of the grants committee.

I have distributed to you a copy of the statement for your minutes and I will proceed to read it.

The Ontario geoscience research grants program was initiated in 1978 to encourage geoscience research at Ontario universities. The rationale for establishing this program was to provide new geoscience data, concepts and techniques to the mining industry and to help reduce the high risks inherent in mineral exploration. This rationale remains sound.

By supporting mission-oriented geologically related projects carried out in Ontario universities, a program of research was established which complements the work of the Ontario Geological Survey through its mandate, which is, "To stimulate exploration for and facilitate sound planning in all matters related to mineral and other earth resources by providing an inventory and analysis of the geology and mineral deposits of Ontario."

Up to \$500,000 annually is provided entirely by the Ministry of Natural Resources to help finance research projects that will facilitate mineral exploration in Ontario and assist the Ministry of Natural Resources earth resources program.

Finding new sources of economic minerals in Ontario increasingly requires a more extensive and multidisciplinary understanding of the geological processes which give rise to economic concentrations of minerals. Few mineral exploration companies have the resources to conduct this type of research and the few that do consider any results confidential. Information which is valuable to the industry at large remains unavailable.

By funding research which focuses on solving problems relevant to the search for minerals in Ontario, the program helps reduce the costs and increases the effectiveness of exploration,

thereby making exploration in Ontario a more attractive proposition for exploration companies, many of which are not based in Ontario.

A faculty member of any Ontario university may make an application in accordance with the criteria of the program. All project proposals are reviewed by the geoscience research committee which reports to the director of the Ontario Geological Survey. This committee consists of three representatives from the mineral industry, three representatives from the university community, four representatives from the Ontario Geological Survey and a chairman. All committee members have an equal vote. Proposals are selected on the basis of scientific merit, relevance of the research to the Ontario Geological Survey activities and their ability to stimulate and benefit exploration in the province. The criteria for this program were established by the Ministry of Natural Resources prior to implementation and have remained the same.

In the seven years this program has been in existence, \$3.5 million has been made available to enhance geoscience research in Ontario universities. This funding has supported projects designed to improve the effectiveness of exploration for metals, industrial minerals and hydrocarbons in Ontario.

With the renewed interest in gold in Ontario since the early 1980s, the emphasis of this program has followed suit. In 1984, almost half the 24 grants issued went towards projects aimed at improving existing techniques used for gold exploration. The results of these projects help mineral exploration companies target areas where major gold production is lacking, but the geological setting is favourable.

The research findings associated with this program are made available equitably to all interested parties. No one facet of the industry benefits over the other. Successful grant recipients are required to submit reports for publication in the annual summary of research published by the Ontario Geological Survey.

They also participate in the annual Ontario Geological Survey geoscience research seminar. The growing attendance at this seminar indicates that it has become a valuable event for those involved in mineral exploration in Ontario. It provides the opportunity for the exchange of information by government, industry and university and also helps reduce duplication of effort. The ministry has played host to an average of 750 participants at this seminar in the last three years.

In summary, the Ontario geoscience research program has been and remains an effective vehicle in furthering the objectives of the Ontario Geological Survey to stimulate exploration and to provide an analysis of the geology and mineral deposits of Ontario; and in emphasizing Ontario's exploration potential by reducing the costs and increasing the effectiveness of exploration, by increasing the knowledge base of Ontario geology, and by widely disseminating the results of the research program to all interested parties.

As a result of this program, the resources of Ontario universities are today more sharply focused on answering the critical scientific questions relating to the discovery of new mineral wealth in Ontario. Geologists graduating from Ontario universities are better equipped to conduct exploration projects in Ontario for the industry.

Mr. Breaugh: Mr. Chairman, I have a couple of questions. One of the things I noticed in going through the material was that it would appear some individuals who served on the review committee itself also received grants for research. Is that right?

Mr. Charteris: That is correct.

Mr. Breaugh: Would you lead me through that as to how it is done?

Mr. Charteris: In the review process, the committee member does not participate in the discussion concerning his program or any program relating to his university. They are absent from the room during the discussions and the program is assessed by everyone there.

The review process consists of a discussion for each grant request. The grant request is distributed to two of the members of the committee whose expertise is close to the grant request. They in turn each look to two outside reviewers with greater expertise in the field. In addition, there are internal experts within the Ontario Geological Survey. The results of each of these assessments are returned to the two committee members responsible, and on that basis and from their own knowledge of the program they make the assessment.

At the time of our meeting, which was held just last week, if it involves a committee member who has made the proposal or if it is from his university, he is absented from the room. A discussion follows without his participation and it is voted on entirely on the basis of its relevance and merits. In the past, a number have been turned down by committee members and for the university.

Mr. Breaugh: I hope you understand that I have a bit of a concern here. It just does not look good, among other things, to have somebody sit on a committee reviewing this and then receive money. As far as I can determine, there is not much chance for personal gain directly. There may, of course, be some advantage in the future in having done specialized work of that nature.

Have you given any consideration to at least turning your attention to this problem? Is there any way around it, in other words?

Mr. Charteris: No, not really, because if the man has submitted a good piece of research, a committee member should not be excluded from the ability to utilize his own facilities at his own university.

Mr. Breaugh: Tell me why he should not be excluded.

Mr. Charteris: If the man was a competent researcher, we would be excluding his knowledge from being applied to Ontario's resources.

Mr. Breaugh: Except that in most of our other agencies it really is given that if you are dispensing moneys for research or for any reason, you cannot one day sit on the group that is handing out the cheques and the next day stand in line with the group that is receiving the cheques. That is a virtual no-no.

I am not suggesting there is anything untoward going on here. For the sake of propriety, it is just not done.

Mr. Charteris: Dr. Milne would like to make a comment.

Dr. Milne: I might add that in the process of review of the submissions none of the information is provided to the individual who has a conflict of interest.

One of the reasons for choosing some of these people for the committee is their basic scientific excellence. If we exclude them from applying--and they do not get paid very much for this, I should add--we are asking them to work for the committee in reviewing these things and then excluding them from it.

That is one factor. The second is that I believe the committee process is such that it excludes them from any knowledge of what goes on in discussion. The weighting of the committee is such that you have four industry people and four ministry people. You are talking of only three universities, so it is one of those three that might be involved. The weight of opinion and perspective on what is needed in research is pretty heavily towards industry and the ministry, and the individual who has a conflict is excluded from the discussions, so I think the process takes care of the perhaps apparent difficulty there.

Mr. Breaugh: It is just that we have had a couple of other agencies where we have run into this problem, and it falls right along your lines. There are some endeavours in which you want to get some expertise, so you obviously want the people who would be active in that field to have some involvement.

I am not sure I am quite satisfied. I believe the other had to do with petrochemicals or something. At any rate, they use much the same approach. When it comes time for my turn to apply for money, I leave the room. This obviously satisfies me that this is fair and all that, but I do not know that you could go outside to the rest of the people in Ontario and say, "I did not sit in on the meeting that day," or "I was excluded from the panel," or "They did not tell me about it; they just gave me the money."

2:30 p.m.

I think there is a problem there and we should try to address ourselves to that. I am looking for any problems in trying to do that, because it does seem to me to be something where I do not know that anything untoward is going on here, but certainly as a basic rule of an agency that dispenses money you should not be

able to sit on the agency and get the money.

We have tried a number of recommendations with other agencies that have the same problem. Most of them did agree that at least some set of procedures should be established whereby this was done in more formal way than just absenting yourself from that particular conversation.

Would it cause you grave problems if we made recommendations along those lines?

Dr. Milne: I think one of the difficulties is membership is a three-year process so that for that period of time that particular researcher would be excluded from applying to the fund. Then the question would be how far would you go. Would you exclude that university from the fund?

Mr. Breaugh: What if you did simply that? What if you told the person, "For the three years you serve in an advisory capacity, we ask you not to submit proposals for research"? Would that be a great hardship?

Dr. Milne: I think our difficulty would be in having good people come forward to the committee because we would be cutting off an avenue of research funding which, because of the status and the capability, they are quite likely to be successful in obtaining.

Mr. Breaugh: But would this be a great hardship?

Dr. Milne: In as much as research moneys are in short supply in general, yes, they might see that as an inhibitor in participating on the committee.

Mr. Charlton: How important is their expertise to the deliberations of the committee?

Dr. Milne: Quite significant.

Mr. Charteris: Yes, especially as we try to select those with a broad spectrum of expertise. We find them very fundamental to our discussions.

As some extension to what was said about the universities being excluded, I do not have the statistics but the number of grant requests that are being made by a university whose member is absent and has been turned down is often surprisingly high. So the fact they are on that committee provides no favouritism.

Mr. Breaugh: When there are 11 members on the committee, it does not seem like an unreasonable request to say that those 11 people for this three-year term will not be eligible for grants.

Dr. Milne: Eleven people are ineligible. It is only the university ones who are eligible. There are only three of them.

Mr. Breaugh: Only three.

Dr. Milne: Yes. The rest of the committee are from industry and the Ministry of Natural Resources and do not receive grants at all from the committee.

Mr. Breaugh: Is the field of study so small that withdrawing three people for a three-year period would cause grave hardship?

Dr. Milne: It provides the balance to the fund in as much as it is funding university research. What we have there is a large balance of industry and ministry people and three university people to provide a university perspective to the deliberations and some of the difficulties in relation to funding students and so forth, in addition to the specialization of a particular area of research. It is very valuable to have them there to give that. They represent less than 30 per cent; three out of 11.

There are eight people there who are deliberating, arguing, deciding, who have no vested interest in the moneys because they are not in the research area. It is simply those three university people on the committee who may be in that position.

Mr. Breaugh: Let me pursue one other area. What does the private sector do towards financing this program?

Dr. Milne: I think we provided the answer there. They do not provide any money. I think that was a question we were asked at one stage.

Mr. Breaugh: What do they provide?

Dr. Milne: I would hazard that they provide a significant contribution in as much as they give of their time and their expertise for a very nominal sum in order to advance research and science in the applied area of exploration.

Mr. Breaugh: Has the private sector ever been asked to participate in the funding of the program?

Dr. Milne: The program has never been set up as a joint funding program. Industry does conduct some of its own research, as Mr. Charteris said in the introduction. Usually it is larger companies. Any research they do is generally proprietary. They invest money in it for themselves or for sale but it is not generally available. What has been provided is information that is generally available.

The other thing is actually the objective of the program in itself in the beginning, which was to turn university research to some extent away from esoteric to more applied features. I think the fund has been successful in that. Also, as Stan mentioned latterly in his introduction, it has introduced students to research in that area, which then makes them better suited to work in exploration in Ontario. The primary purpose was to turn some of the university research towards applied issues that would assist in exploration in Ontario.

Mr. Breaugh: It would seem fairly logical to me that the

industry itself would want to participate in the funding of this kind of program. I am not sure whether anybody has ever asked them.

Dr. Milne: You would get into mixed joint ventures with ownership problems about information and the like. This is clear-cut and simple. The university people do the research and the information is available to the public in general.

Mr. Breaugh: I am sure all those mining magnates must get in there and grit their teeth because they feel this is socialism at its worst, government funding to the private sector.

Dr. Milne: I will let Stan answer that.

Mr. Charteris: Not at all. They co-operate in most facets of this program. If the program requires study on their properties, then the answers obtained from their properties are made public to the rest of the country.

Coming back to what they would finance, companies have a greater tendency to go directly with a specific problem to a university or to a research facility and fund it directly, so they can keep the data entirely to themselves.

Mr. Breaugh: They have never expressed an interest in participating in the funding of this program at all?

Mr. Charteris: Their support comes simply by allowing people on to their properties to do the research programs.

Mr. Chairman: Are there any other questions? Mr. Watson was next and he is going to the telephone.

Mr. Kells: He has gone to the telephone.

Mr. Chairman: He is answering a call.

Mr. G. I. Miller: Have there been results that have been constructive and useful for the mining industry? Do you have any evidence to support that?

Mr. Charteris: One facet of the research is the study of rare-earth elements. This has the aspect that changes in the rock composition or in the type of the original rock composition are indicated through the study of these elements to find out which portions are more favourable for exploration. It is a case of narrowing the target from a broad ball park to a smallish segment.

Mr. G. I. Miller: Are there financial gains from that of benefit to the mining companies?

Mr. Charteris: To the extent that they can concentrate their funds in the most effective area.

Mr. G. I. Miller: Do you have any concrete evidence that has come about, any examples?

Mr. Charteris: I presume you are asking if we can point

to a specific ore body that was discovered through the funding of this research grant proposal program. No. It provides a lot of building blocks that help us along on our search, but it does not provide the key to new ore bodies themselves.

Mr. G. I. Miller: How many years has it been in operation now? Five years?

Mr. Charteris: Seven.

Mr. G. I. Miller: Does the mining industry do any similar research on a corresponding basis?

Mr. Charteris: A few of the larger companies have a research program, but unfortunately in these past few years, as contractions within the industry have occurred, the luxury of a research program has been terminated in most cases.

Mr. G. I. Miller: With the lack of job opportunities in the north, is any priority given to northern Ontario universities, or is it simply Ontario in general?

2:40 p.m.

Mr. Charteris: It is a completely impartial selection based entirely on the quality of the proposal. If a northern university provides a good proposal, it is certainly supported.

Mr. G. I. Miller: Are you satisfied they are all getting a fair share of what is available?

Mr. Charteris: I am satisfied that the selection of the grants is fair because we try to select those of the best quality.

Mr. G. I. Miller: Does it pertain only to minerals? Are oil and gas another area that comes under its jurisdiction?

Mr. Charteris: Oh, yes. Many of the projects have been for evaluation of the petroleum potential and the general hydrocarbon potential of southwestern Ontario, for extensive research along the lines of the Ontario Geological Survey and--what is the other department, the special branch that was looking into hydrocarbons in the basins?

Dr. Milne: It was the hydrocarbon energy resource program operated by the geological survey, Ministry of Natural Resources. There are a number of oil and gas projects undertaken. There are a number of industrial mineral projects. There are a number of projects related to small-scale technology, you might say. It is not really a technological fund, but for methods development in something.

In respect to your specific question, there is support of petroleum, oil and gas studies to a limited extent. It is not a major component of the fund.

Mr. G. I. Miller: It is not major.

Dr. Milne: No.

Mr. Watson: In your opening statement you said the results were distributed equitably. That word intrigued me. Why is it there? Are the results not available to anybody who wants them, or are they not available equally to anybody who wants them? The word was "equitable."

Mr. Charteris: They are released at the OGS seminar. That is the first presentation made to the public by poster session or by oral presentation of the progressive results of the research.

Mr. Watson: However, anybody can have them.

Mr. Charteris: At that time, yes.

Mr. Watson: What are the proprietary rights of the university involved? Do you have a contractual arrangement regarding the research? What is the arrangement you have? Is it not a research project of the university? Do your rules apply or do university rules apply?

Mr. Charteris: We will supply the funds. If they accept the funds, they must publish the results in the form that has been designated.

Dr. Milne: We perhaps used the wrong word. It is equal availability basically. There is the seminar. An annual summary is published. We actually had it that it is free. That is not the case because we charge \$2 for the summary, but it is a nominal sum.

The information is equally available through the publication of the annual summary and the publication of a final report of the research. A release notice is provided so that anyone who is interested is aware the information becomes available at a certain time, and the information must be provided to us by the university.

The only limitation in our contracts with the universities is that, if they have developed a specific item where a patent is developed, the university would retain it, but the government could use it freely for its purposes. That is the only limitation we have on information; otherwise it is provided at our behest on the part of the investors and is freely available at about \$2.

Mr. Watson: Are there ever any--for lack of a better word--copyrights, patents, things of that nature that flow from your research, processes that can be protected by some type of patent or copyrights?

Mr. Charteris: As yet, no. We have not seen them.

Mr. Watson: What would happen if that were to take place? Let me put it in the context of another ministry. The Ministry of Agriculture and Food contracts with the University of Guelph for research in establishing a new variety of crop. If they get that crop, we have this ongoing argument of what they call "breeder's rights." Who has the rights to that? Do you have any

similar such problems?

Dr. Milne: We have not had that to date. As I indicated in the terms of reference, there is an indication that if a university develops an item which is patentable, then it can proceed to do so and hold the rights on that, but the government can use it freely for any of its purposes. If it were marketable, then the university could market it. That has not happened to this point, but that is in the conditions of it.

Mr. Watson: You deal only with research grants to universities?

Dr. Milne: Yes.

Mr. Watson: Is that because of the terms of reference you are given? Do you believe the terms of reference are adequate? Would you like to be able to provide research grants to somebody other than universities?

Mr. Charteris: At this time there are not that many centres of research in this field that could be funded, not in Ontario.

Mr. Watson: What are some examples of what a university does in terms of research that private industry would not or could not do?

Mr. Charteris: I am trying to deal with an answer--

Mr. Watson: I am going to zero in on the context of southwestern Ontario in terms of looking for oil, natural gas, mapping of the Lake Erie floor or that kind of thing.

Dr. Milne: The example I was going to give was in relation to gold, which has been of considerable interest. We had one or two studies in relation to rock structure and its relationship to gold mineralization. That involves looking at large areas of rocks, examining them for particular characteristics, interpreting those in relationship to the known mineralization.

This is a fairly academic pursuit. It covers a large area and is not specifically honed in to locating a target. That is the type of thing we can get university people to do. The industry is not likely to do that particularly in hard money times when the principle objective is to focus in on targets from which it will get some return. That is the type of thing universities would do which you would not find normally in industry.

Mr. Charteris: Another expansion on that is this current project up into Cameron Lake where specific property has been examined in some detail and the results of this are being applied to the entire area by the researcher. The results from an individual deposit are being expanded and applied so the whole area can be analysed for its potential in the light of the discoveries made to date. I do not know of any private company that would ever consider doing such an expanded exploration for

the broader progress of the area.

2:50 p.m.

Mr. Watson: But if you are examining some kind of rock formation in a specific area, it is likely that a company has the mineral rights on that area. Would that not be right?

Mr. Charteris: It does not have all the potential land. Witness Hemlo. There are at least three groups working there; so one did not manage to tie it all up.

Mr. Watson: But if you start doing research in a specific area, does the land not get staked pretty fast? I cannot help thinking that some of the research you are doing must result in benefiting a specific company more than another. It is not that I think there is anything wrong with it. I just think that if you are doing rock assessments you will not limit yourself to areas that were not part of a specific company's mineral claims in the research program, will you?

Mr. Charteris: Yes. Many of the favourable areas are covered by existing claims, but the results of this program would probably stimulate exploration on the adjoining ground, which is all to Ontario's benefit.

Mr. Watson: One of the activities in southwestern Ontario is the storage of natural gas. If somebody wanted to conduct a project to determine the pressure at which you could store this natural gas in one of these underground storages, it seems to me that this kind of research project would not be the domain of a university; it would be the domain of one of the companies that store the natural gas. Is that kind of project out of the question with respect to the type of thing you would fund?

Dr. Milne: No. That specific type, I do not believe, would be funded. If it is pressurization of storage reefs, then I think industry would be looking at it.

We do conduct projects that look at rock strengths. The University of Windsor has a department that looks into that type of thing. It will study rock strengths of the various limestone formations and so on, and that has general application in engineering, construction and so forth. Studies are conducted that involve geological environments that relate to reefal structures.

The environment is important to the reefs' general capability to hold gas and so on, but that is a broad picture of the reefal structure, not a detailed examination of a pressurization capability. It is an engineering study that should be undertaken; it is not a scientific one.

Mr. Watson: Are you telling me that the scientific projects that you approve have nothing to do with engineering?

Dr. Milne: I should qualify that or the engineers will nail me to the wall. It is scientific, but it is an engineering thing; it is not a research geoscience project, and that is what

the fund is looking at.

We would look at reefal formation, at the rocks around reefs, which tend to hold gas in, and at what the general environment is and provide information on that. Information is also given on rock strengths and the like. But a specific engineering study, which is essentially what you are suggesting, would not be supported by the fund.

Mr. Watson: Maybe I picked the wrong example. I just wonder why, and I guess the reason is that is your mandate and therefore you cannot go outside it. Would it be helpful to widen your mandate? One of the things we want to do with various committee groups that come in like yourself is to ask whether your mandate is what you think it should be. I guess one of my questions is, should your mandate be widened to include private research? Why should they not have as good an application as a university?

Dr. Milne: I would suggest that you set up something separate; otherwise, you become confused between the university's role and the applied research work, which is not specifically target-oriented, as opposed to something very specific like that. If you were going to do that, it might be a separate entity with its own terms of reference.

Mr. Charteris: That is certainly the sort of problem where a private company would go directly to the university and say, "Here is what we want resolved, and we will fund you entirely on our own."

Dr. Milne: In the specific engineering case, we would be concerned about getting into the private sector. There are engineering companies that perhaps would conduct that type of thing; therefore, it is a private sector area.

Mr. Charlton: I want to get clear in my head what you are saying. I suppose the kind of research you would be interested in doing in a situation like that is around the type of reef and rock formations that are suitable for that kind of storage vault, the strengths of rocks and so on, whereas you would not be interested in doing research as to the suitability of a specific site. Is that essentially what you are saying?

Dr. Milne: Yes. We would not go in and support someone to pressurize a reef to determine what its maximum pressure capacity was and so forth. That is a private sector area, actually.

Perhaps in relation to working on a specific property, as Mr. Charteris was mentioning, it is a point that the company that does it is generally not going to spread it freely around to its neighbours, adjoining property holders or exploration companies in similar geological environments elsewhere, whereas the university people get to go in, have access to these things and can form conclusions from the knowledge of that ore body which are then given to everyone. They can apply them to other claims and similar situations around it or in other exploration areas where there is a similar geological environment. Thus it gets the information out of the specific deposit.

To return to Mr. Miller's question, it is for general application and it adds to the fund of knowledge of how mineral deposits get where they are, but it still does not tell us exactly where they are.

Mr. Watson: Among how many projects will your \$500,000 per year be divided?

Mr. R. Watson: Approximately 24 research projects per year, on average.

Mr. Watson: Are they \$40,000 each or are some of them--

Mr. R. Watson: The projects vary in size, of course. Some projects go that high, but generally they are a lesser amount than \$40,000.

3 p.m.

Mr. Watson: Someone asked earlier if you had any great examples of things these have done and you have none you can point to, which is understandable, but with respect to something at a university, what percentage of the cost of a project do you fund? Is it 100 per cent, or does your funding go to provide for a teaching assistant for someone who is already working at something?

Mr. Charteris: The funds pay the projects 100 per cent, except for equipment or hardware required. The universities must demonstrate they have or have access to all the necessary equipment to carry out the research. The funding does not provide the salary of the university professor, but only that of his research associates, who are generally graduate students.

Mr. Watson: You have probably answered my next question as to whether a lot of your funding goes to graduate students doing a thesis for a PhD, or something of that nature.

Mr. Charteris: Yes.

Mr. Watson: That goes to providing some salary. Does it also go to providing, not equipment, but travelling or living expenses, or is it strictly straight salary?

Mr. Charteris: Travelling or living expenses in the field directly related to the project only.

Mr. Watson: You mentioned the University of Windsor. Which other universities in the province have participated in this?

Mr. Charteris: Just about every university in Ontario with the exception of Sir Wilfrid Laurier and Trent. I am not sure whether they have geological departments, but we have not received any requests from them.

Mr. Edighoffer: To date, have these grants you have given out led to jobs to any great extent in a time of high unemployment? Can you say thus far whether they have directly led to any new jobs?

Dr. Milne: It is extremely difficult to make a direct relationship. There has been a fair amount of research in relation to gold and gold localization. Actually, the fund was supporting things of that nature back in 1978-79, which was extremely valuable when the great rush came along and the price of gold went to \$800.

That information has contributed to the exploration that has been done, but whether some of the jobs actually evolved from the use of that information is difficult to pin down. It has contributed to the capability and improved the targeting of the exploration, and perhaps it has helped in selling some programs so the companies undertook exploration, which would create jobs, but we cannot determine that for sure.

Mr. Edighoffer: The reason I ask is, in looking over the report about whether you should be sunsetted, I notice the Ontario Mining Association wrote--and, of course, it may take a different view now that it has a different executive director from the one it had previously--

Mr. Breaugh: It is more right-wing now.

Mr. Edighoffer: They suggested it should be continued and maybe even expanded to the national level. I noted in your comments, particularly at the top of page 2, you said the funding research helped to reduce the costs and increased the effectiveness of exploration and became more attractive to exploration companies, many not based in Ontario.

I am wondering whether you feel you are accomplishing enough here or if it would be much better to do this on a national basis, particularly when you say that many of the companies that have benefited in any way do not seem to come from Ontario.

Dr. Milne: If I might interject on that, the role of the OGS is to attract exploration to Ontario. We are achieving some of that through this fund by providing information that assists people to assess the potential of the province and then to target in on things to explore. Extending it nationally is up to the other provinces. Our job is to try to bring people in here to explore for and find mineral deposits for the benefit of the people of Ontario. The Ontario Mining Association would have a broader perspective than I would.

Mr. Charteris: It is not really the function of the Geological Survey of Canada, which would be the comparable group that would have to organize it nationally.

Dr. Milne: Perhaps I might return to your question about jobs and the fact that our encouragement of exploration to come here means that jobs stay here. There is a high level of gold exploration and exploration in other areas. In that context, attraction of exploration means jobs. If the exploration goes elsewhere, there is a diminishing of the jobs. There is a direct relationship.

Mr. Charlton: On that issue, you said it is difficult to

pinpoint the jobs that relate, and I understand that. Could you say that exploration has gone on in Ontario as a result of your research that would not have happened otherwise? That is a clear indication of job creation even if you cannot put numbers to it.

Mr. Charteris: It has been better focused in Ontario than it would have been without this program.

Mr. Mancini: Do you not think the price of the commodities decides one way or the other whether there is exploration? If that is the case, why do we have to get involved at all?

Mr. Charteris: The price of the commodity does affect it. However, the effective way of discovering the deposits is increased efficiency. That is created through these research programs and makes much more effective use of our exploration dollar.

Mr. Mancini: Why should we be concerned about that?

Dr. Milne: Perhaps I might add that not only does it make it more effective but it is also necessary to believe and have a reasonable appraisal that there is something to explore for.

The price is extremely important. If it is not selling, no one is going to look for it. However, if it is selling, the question is, "Where can I find it?" That is where the provision of this information comes in. They can assess the information. They can look at Ontario and say, "That is a good place to look for this or that commodity."

While the price is extremely important, it is also necessary to know there is good potential to find a particular commodity.

Mr. Mancini: Please correct me if I am incorrect. I am just throwing this out. Why should we be doing this work for wealthy corporations such as Campbell Red Lake Mines Ltd.? Why should we be helping them in this exploration business when they should be doing it on their own?

Mr. Charteris: There are a lot of very small companies as well.

Mr. Mancini: It goes back to the price of the commodity. If the price of the commodity is high enough, the small businesses will eventually reach a point where they can go out and explore and they will search for the commodities. If it is not, it will be the big companies, which have the stability and the resources to take a chance on something.

I do not think the money you spend is significant enough to have a major effect. At the same time, it is a government expenditure and we have to look at and see if we are getting value for our dollar.

Dr. Milne: You are addressing the fund specifically.

That is part of the total program; so there is a larger amount spent. Ontario wishes to see the resources developed. It is necessary to alert people to the fact that resources exist to be looked at and that there is basic information so you can assess whether it is worth your while to come in. It is a high-risk business, and we are in competition with other provinces and other states.

3:10 p.m.

Mr. Mancini: Let me ask you this: Were you instrumental in any way or involved in any way in the Hemlo discoveries?

Dr. Milne: We had mapped the Hemlo area in 1978, at least maps and so forth, just following that. Dave Bell, the geologist who was responsibility for the discovery, has said publicly that our maps were of value in laying out and proceeding with his exploration program. That did not find it. It still needed the prospector to have the bright idea, it still needed the price to be at \$800 and it still needed financing.

Mr. Mancini: And it needed the Vancouver Stock Exchange.

Dr. Milne: Sure, that is the financial side of it.

Mr. Mancini: Unfortunately, we could not do it here.

Dr. Milne: Bell had a concept of how that mineralization existed and was spending lots of money on drilling. He feels the information he had available assisted him to do that and to be successful as opposed to scattering all over the place and maybe not being successful.

Mr. Mancini: Was your map the only one available?

Dr. Milne: Yes.

Mr. Mancini: It was.

Dr. Milne: The Ontario Geological Survey is the only agency in Ontario providing geological maps.

Mr. Charteris: He used this map for the selection of the area. It was at a time when his funds were very minimal.

Mr. Mancini: You have not totally convinced me, but you have softened me up a little bit.

Mr. Chairman: Could you lead me through the steps where, for example, somebody thought he had a new method for finding gold and wanted to research it a little further and needed financial assistance? How would he come to you and what would you do with him leading towards a grant?

Mr. Charteris: I presume the person with the inspiration is associated with one of the universities.

Mr. Chairman: Yes, fine.

Mr. Charteris: Because we consider requests only from Ontario universities. Every year by November 15, which is the cutoff date, a grant proposal must be submitted outlining the scope of the research, the budget and the people involved. This is received along with all the other grant requests.

At a meeting held by the chairman, Dr. Milne and Mr. Watson, the grant requests are distributed among the 11 members of the committee. Each grant is given to two of the members who are most familiar with the field involved, and they go out and select from the peer group of the investigator at least one, often two, outside reviewers who have a detailed knowledge of the subject.

The OGS itself has at least two of its internal people review it as well. Each request would receive up to six outside reviewers, plus the two on the committee. Based on these reviewers' comments, the quality of the project is assessed and discussed at the annual meeting, which is a two-day meeting usually held about the end of January. It is voted upon at that time. One of the reviewers presents it to the rest of the committee, outlines the conclusions he has reached, plus those of the other reviewers, and the committee in turn votes on it.

Mr. Chairman: You have a certain amount of money available for a certain number of grants.

Mr. Charteris: That is right.

Mr. Chairman: So, on a voting system, those who receive the most points, so to speak, are found acceptable. Is that it?

Mr. Charteris: Precisely.

Mr. Chairman: You have approximately 24 successful applications per year.

Mr. Charteris: That is right.

Mr. Chairman: How many applications would there be?

Mr. R. Watson: There are upwards of 50. I believe in 1984-85 there were about 48 proposals.

Mr. Charteris: There were 47 this year.

Mr. R. Watson: For our 1985-86 review there were 47, as Mr. Charteris has just said.

Mr. Chairman: How many employees of the ministry are there on your committee?

Mr. Charteris: Four.

Mr. Chairman: Do they take part in it the same as all other members, or do they have any separate functions? What role do they play?

Mr. Charteris: Just an equal role. They have no special

rights or functions.

Mr. Chairman: If I may ask, from what section of the Ministry of Natural Resources would they be drawn?

Mr. Charteris: They are selected by Dr. Milne from among men and women he considers best equipped to come on the committee, those dealing primarily with mineral deposits.

Dr. Milne: They are from the Ontario Geological Survey. We have a number of sections there: geophysics, geochemistry, mineral deposit studies, pre-Cambrian geology and engineering geology, and four members are selected, generally from a spread of those sections, to provide a spectrum of special capabilities on the committee.

Mr. Eichmanis: This may be following up on some of the chairman's questioning. I wonder if I might play the devil's advocate. If you eliminated the committee and simply had the people from the ministry ask for references or referees from the university community to judge the appropriate proposal, could you not then eliminate the committee entirely and have the same result?

Mr. Charteris: They really would not have the broadness of the exposure that is available to them by having members of the academic community and private industry on the committee. It also has the advantage that the universities that were rejected could not point to the ministry as having a bias against them, because there are six outsiders and four from the ministry.

Mr. Eichmanis: On the second page of your statement, at the bottom, you indicate, "In 1984 almost half of the 24 grants issued went towards projects aimed at improving existing techniques used for gold exploration."

I am curious about how this works. It seems to me that the people in universities would independently decide what they wanted to study, what their project was. This seems to indicate that you are prepared at least to consider or put emphasis on gold projects rather than on some other sorts of projects. Is that correct?

Mr. Charteris: No, not really. It is just that the researchers--and they are exceptionally qualified researchers--brought forth some exceptionally good programs, better than any of the other programs, that happened to have a gold bias.

Mr. Eichmanis: Again we have Mr. Mancini's point. Was this because gold was \$800 an ounce?

Dr. Milne: No. The terms of reference of the committee and the criteria for acceptance are general criteria, and it is up to the researcher to come forward with the ideas and make the proposals. We do not say, "This year there is an emphasis on this or that." The researchers recognize that gold is one of the hottest items at this point, and therefore a significant number of the proposals coming forward were in relation to improving and understanding gold mineralization. Basically, I think the reason

that was put in was that it matched the interest of exploration at that time. The universities were responding in an applied way to an obvious need.

Mr. Eichmanis: So no sort of message was going out.

Dr. Milne: No. There is no indication that this year we are going to lean towards one thing or another. The criteria are general and the researcher can put in whatever topic he wishes. It only has to be relevant and good and scientific.

Mr. Eichmanis: Could you not turn that around and say that maybe that is what you should be doing? Since it is tending to be more applied than the theoretical kind of thing that you want to get away from, should you not be sending out messages like, "Perhaps we should be looking more closely at this because we need more information in this area than in that area"?

3:20 p.m.

Dr. Milne: I was going to say that comes into relevance. When the committee looks at them, if someone is proposing an excellent scientific program to examine the left toe of a one-eyed newt, the committee would say that is not economically relevant at this time. They would ask the priority of that in relation to something, like gold or precious metal. Its relevance is measured by the committee.

Mr. Eichmanis: The relevance is something the applicant knows only after he has gone through the committee process, he does not know before he makes the proposal. If he knew--

Dr. Milne: I guess the one I gave was fairly obvious. It does not have much economic bent to it. The terms of reference of the committee say economic relevance, and also relevance to the Ontario geological survey program, and they are all made fully aware of what the program is through the geoscience research seminar. They know the emphasis and priorities of that program so they have some measure of--

Mr. Eichmanis: I was thinking that if I were the applicant, I would want to know before I made my application what is more likely to be favoured than not because I would want to get that grant. Therefore, I would attempt, as far as I could, to find out what is likely to be accepted and what is not.

Mr. Charteris: It has always been the past policy of the committee to try to visit the universities every other year to outline the objectives and discuss with them the type of proposals in some detail that had been supported and would be considered favourably.

Mr. Eichmanis: So they have some general parameters.

Mr. Charteris: Oh, yes.

Mr. Charlton: We could maybe twist that question just a little bit. If you were getting messages from the mining

association that there was a real need for more information in a particular area and you were not getting proposals on that, would you consider taking it upon yourselves to indicate that you are getting the message that there is need for research in this area?

Mr. Charteris: On the whole, Ontario universities are astute enough to realize this.

Mr. Charlton: They pick up on it before you ever get to that stage.

Dr. Milne: This type of thing would tend to come through at the various meetings of the societies, such as the Canadian Institute of Mining and Metallurgy and the Geological Association of Canada. It would come through in that atmosphere and they are tuned into it generally.

Mr. G. I. Miller: Does the Ministry of Natural Resources give you any direction on your priorities?

Mr. Charteris: No, not in detail.

Dr. Milne: Only in so far as our program is presented at the seminar annually, what we are doing, the types of things in the areas in which we have priorities, but just in a general sense. Again, there is a fairly reasonable interaction between the ministry, scientists, university and industry through various meetings of the Canadian Institute of Mining and Metallurgy and the Geological Association of Canada where they are talking about their research and their work and they, in fact, collaborate sometimes and know what is going on and have some sense of the priorities.

The principal one is the economic one, of course, and that was to try to turn it towards some applied thing.

Mr. G. I. Miller: Again, I think gold was emphasized and when gold was up at \$500 an ounce that was pretty profitable, but I see now it is down to a point where it is kind of on a teeter-totter and it is like putting all your eggs in one basket. The thing may well prove--

Mr. Charlton: Are those golden eggs?

Mr. G. I. Miller: They killed the goose that laid the golden eggs.

I just wondered if that has an influence on it and if you consider making it broader to include things like gas. There is lots of evidence that there is plenty of gas in southwestern Ontario. Maybe there has never been much deep drilling carried out. I wondered if there was any direction from the ministry people. Where do you take your direction from?

Mr. Charteris: Actually, there is a surprising variety of grant requests we have received and there is considerable investigation into the aggregate and locations of aggregate, say, in southwestern Ontario, the methods of finding them in areas

where they are not exposed.

Dr. Milne: In oil and gas, it may sound esoteric, but there is a clay study proposal that relates to clay in the sediments that holds the oil and gas and how it responds to certain chemicals. Southwestern Ontario is the cradle of oil and gas exploration.

Being first, a number of mistakes were made, one of which was depressurizing oil fields. One of the most interesting areas for southwestern Ontario is enhancement of recovery from those depressurized areas. This is done, in some situations, by driving other fluids through the rock reservoir, but if you use the wrong fluid, you can plug up the thing because the clay reacts in a certain way with the fluid.

Research proposals of that type have come forward. I cannot remember offhand if that one is supported, but I know that type of proposal comes in.

Mr. G. I. Miller: Is there any evidence in other parts of Ontario along that same line? Is one of the criteria to open up new areas of that type of energy?

Mr. Charteris: There was the evaluation of the lignite potential in northern Ontario. It was quite thoroughly done. It was primarily a program of the OGS but facets of the research were undertaken by grant research group funds.

Mr. Chairman: Thank you. Are there any other questions?

The committee has run out of questions, which is the signal to thank you very much for your attendance here today. Thank you very much.

Unless there is anything further from the committee, we will adjourn and meet here again tomorrow morning at 10 o'clock when we will be dealing with the Fire Code Commission.

The committee adjourned at 3.27 p.m.



STANDING COMMITTEE ON PROCEDURAL AFFAIRS

REVIEW OF AGENCIES, BOARDS AND COMMISSIONS:
FIRE CODE COMMISSION

WEDNESDAY, FEBRUARY 6, 1985

Morning sitting

STANDING COMMITTEE ON PROCEDURAL AFFAIRS

CHAIRMAN: Treleaven, R. L. (Oxford PC)
VICE-CHAIRMAN: Watson, A. N. (Chatham-Kent PC)
Breagh, M. J. (Oshawa NDP)
Charlton, B. A. (Hamilton Mountain NDP)
Cureatz, S. L., (Durham East PC)
Edighoffer, H. A. (Perth L)
Kells, M. C. (Humber PC)
Mancini, R. (Essex South L)
McNeil, R. K. (Elgin PC)
Miller, G. I. (Haldimand-Norfolk L)
Rotenberg, D. (Wilson Heights PC)
Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Clerk: Forsyth, S.
Assistant Clerk: Decker, T.

Staff:

Eichmanis, J., Research Officer, Legislative Research Service

From the Ministry of the Solicitor General:

Bateman, J., Fire Marshal

Witnesses:

Ritchie, J., Chairman, Fire Code Commission

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON PROCEDURAL AFFAIRS

Wednesday, February 6, 1985

The committee met at 10:12 a.m. in room 228.

AGENCIES, BOARDS AND COMMISSIONS:
(continued)
FIRE CODE COMMISSION

Mr. Chairman: We have in front of us this morning the Fire Code Commission, Mr. John Ritchie, the chairman, and Mr. John Bateman, the Ontario fire marshal.

Gentlemen, would you come up and take either of those seats--perhaps the two centre ones at the end of the table. Do you have any prepared statement or a written statement, Mr. Ritchie?

Mr. Ritchie: Do you want this statement?

Mr. Chairman: Yes, if you would.

Mr. Ritchie: I would like to introduce myself. My name is John Ritchie and my background since 1937 has been with the fire service. I have been in the capacity of fire chief in the village of Forest Hill and platoon chief in the city of Toronto. Until my retirement in July 1981, I was privileged to be the fire chief in the city of Peterborough.

As of October 27, 1983, I was officially appointed chairman of the Ontario Fire Code Commission. The commission's role is to provide an appeal mechanism for those affected by the fire marshal's interpretation of the fire code or by a fire marshal's order. To date, we have had one sitting, which I believe was held December 14. In that case we ruled in favour of the applicant and against the appellant.

After our first hearing, I and the other members of the board--there are 15 members of the board, incidentally, three of whom constitute a quorum--while we had no qualms about the decision we made, felt we probably required a little more expertise in the area of questioning of witnesses.

As a result, we have established a one-day meeting on March 19 for the 15 members of the commission to set up a mock trial. Then we will break up into groups of three members and adjudicate the facts we have heard. In this way we hope we will enhance our expertise in this area.

We are here today as a result of an inquiry from the chairman. Certain information has been passed on to this committee and a number of questions raised. Together with my confrère, whom I should have introduced earlier, Fire Marshal John Bateman, I will be only too happy to answer these questions for you.

Mr. Breaugh: I have a couple of questions. You have met

now. Were you waiting for an appeal before you had a meeting of the commission? Is that the reason, as I understand it, you were in operation for the better part of the year and did not meet until December?

Mr. Ritchie: Yes.

Mr. Breaugh: I take it you now are in agreement that it would be a good idea to meet a little more frequently and work out some ground rules about testimony and such things. One of the things that occurred to me as being rather odd was that there were 15 people appointed to a commission that had not met yet.

Mr. Ritchie: To back up on that, we did have one meeting. The initial meeting of the commission members was held on July 18, 1984, in the Westbury Hotel, where we were addressed by the Solicitor General and Mr. John Ritchie from the legal department.

Mr. Bateman: I would like to offer a word of explanation about that time gap between the appointment of the commission and the first hearing. You may or may not know that the amendments to the Fire Marshals Act setting up the fire code and Fire Code Commission were brought in in two phases. In 1981 there was the phase dealing with the establishment of the commission and the procedures under which the commission would work. In December 1983 the amendments received royal assent.

At that time we had a large number--I do not have the exact number, but I think it is in the area of 50--of outstanding fire marshal's orders that our legal people told us to handle under the previous procedure, whereby the fire marshal was the person who heard the appeals. Orders served subsequent to December 1983 would be handled under the procedure involving the Fire Code Commission.

We were fairly busy in 1984 dealing with appeals under the old system whereby the fire marshal or deputy fire marshal heard the appeals. They are all going to be handled by the commission now. We have at least 40 or 50 outstanding at present that will be handled by the commission.

10:20 a.m.

Mr. Breaugh: It is a little early to speak from experience, but on looking at the way the commission is set up, it would appear to me to be a little awkward. I am not sure the word is "awkward," but for lack of a better word I will use it.

There are 15 people here; one third of them are going to drop off each year; no one can serve more than three years. What is the rationale? Do you understand why the commission was set up in this way?

It strikes me that three people can form a quorum; probably to reach a decision you want three or maybe five, but I fail to see the need for 15. Do you envisage sitting all the time with 15 people on the commission?

It really is unusual. I cannot think of anything, short of a judge and jury, that uses that many people to hear an appeal like this. Most of the agencies would have three people or five people, or something like that, to sit to hear appeals of this nature. This commission is set up in an unusual way and I wonder what the rationale for it is.

Mr. Bateman: I am not sure, Mr. Breaugh. Do you have a list of the membership?

Mr. Breaugh: I do not believe I have a list of names. I just have an outline of the number of people who are there.

Mr. Bateman: They were selected to give as broad a range of expertise as possible in the field of fire safety and in knowledge of building techniques. If I may, I will just take a moment to run down the list quickly.

We have representatives from the home builders' association and the Insurers' Advisory Organization--the insurance industry brings considerable knowledge and experience to the commission--the nursing home association; the association of architects; Ross Thompson, from Ottawa, who is with the Canadian Wood Energy Institute; a retired fire prevention officer--as you probably know, public servants are not eligible to serve on the commission.

We also have representatives from the Urban Development Institute; Underwriters' Laboratories of Canada; the association of professional engineers; a retired deputy fire chief; a gentleman who is a fellow of the Society of Fire Protection Engineers, retired now and with his own consulting practice; a retired building commissioner from the city of Toronto; the building owners and managers association; and the Federation of Metro Tenants' Associations.

We felt we might be running into situations where any one of these interest groups would be able to assist us in a special way in assessing the appeal.

Mr. Breaugh: If I could just interrupt for a minute, I do not question any of that. I think that is all just fine. What I am suggesting is it is a little unwieldy to have that many people from such diverse backgrounds.

I would have no problem with a tribunal going out to these groups and saying, "Give us your opinion on this," or, "Provide us with some expert testimony," or, "Give us some guidance, a background paper or whatever."

I think it is an awkward way to put together something like this kind of commission essentially to appeal a ruling someone has made. I do not doubt for a minute that you would want to go to all those groups for their information, advice and all that, but it seems to be an awkward mechanism to hear appeals. Why do they all have to sit on the commission?

Mr. Rotenberg: I have a supplementary. Do you anticipate

that all 15 people will sit at every hearing or, as other groups do, will you appoint a panel of three or four people to hear each appeal?

Mr. Ritchie: Three people are a quorum and that is what sits.

Mr. Rotenberg: You do not anticipate 15 people sitting?

Mr. Ritchie: No. You select--

Mr. Rotenberg: You select a panel of three to hear every appeal; is that what you anticipate?

Mr. Ritchie: Yes, right.

Mr. Breaugh: I am still trying to get at the question: Why is everybody on the commission? That is unusual.

Mr. Bateman: To make a decision as to the disposition of an order or to participate in that process, they have to be on the commission. We felt it would make their input more valuable if they did have that role whereby they sat and had to assess both sides instead of lobbying for one side or the other and maybe or maybe not being listened to. I cannot argue with you about whether it is unwieldy, because we have just had the one hearing. It has worked.

Mr. Breaugh: Is it your intention to try to sort them out so that a panel of three members of the commission will hear a particular case? Is that the intent?

Mr. Bateman: Yes, I think so. But it is not our intention to schedule in advance which three members would hear which particular case.

Mr. Breaugh: That is my next problem. If I were taking an appeal to this commission and I walked in and there sat somebody from the housing industry and a couple of fellows from the insurance industry, I would imagine I would get quite a different decision from that panel of three than I would have from, say, a former firefighter, a fire chief and somebody from the tenants' bureau. It seems to me that they would come to it with a wholly different perspective, and unless there were some mechanism to sort it out so the panel of three had some balance to it, you would be getting pretty different results.

I have talked to a number of people from this range, and you get quite different viewpoints from the insurance industry as opposed to those from the housing industry or from tenants. How are you going to balance that? Do you have any thoughts on it?

Mr. Bateman: I think it is going to be a judgement situation. We would not ask a member of the tenants' association, for example, to hear an appeal on a factory or a commercial building, for example, but on a residential building, yes, I would think it would be important.

Mr. Breagh: Are there any guidelines to help lay this out?

Mr. Bateman: We have guidelines here, and to be honest, I do not believe we went into assigning interest groups to special types of orders.

Mr. Breagh: My problem is the way you are set up. It might be fair game to try it with a range of 15 people from every background who might have an interest in it, but unless there is some balancing program in choosing the panels, you are going to get radically different decisions from one group as opposed to another group.

Surely somebody sitting on the commission who in theory is representing a tenants' group would give you a really different perspective on something from that of someone representing the Housing and Urban Development Association of Canada.

Mr. Rotenberg: Not necessarily.

Mr. Breagh: Yes. Necessarily.

Mr. Bateman: The chairman is going to be the common factor.

Mr. Breagh: What I am thinking is that, for example, with a labour relations tribunal there is an effort to acknowledge that there are appointees from management, appointees from labour and someone who chairs it. We are acknowledging that there are probably two perspectives on any labour argument, and one provides the input or perspective from a particular bias while the chairman provides the balance. I think you are going to have to do somewhat the same thing.

Mr. Bateman: I honestly hope we do not. Every one of these members expresses the common interest in improving the standard of fire safety in the older buildings throughout the province. I myself have not seriously considered what you suggested, but I hope we do not get into a polarization of positions on the commission whereby we get three-to-two votes in every situation. In the one we have had it was unanimous.

Mr. Breagh: What kind of work load is being generated? You say you have 40 appeals on the books now?

Mr. Bateman: Yes.

Mr. Breagh: I am aware that in my own community and in others there has been a rather marked change in the attitude of fire marshals and fire departments. They now have a code that is a little clearer than it used to be and they have considerable clout. Fire marshals can shut you down when everybody else cannot, and they appear to be doing so.

To give you a couple of examples, there is a growing trend towards day care centres. People buy a big old house and convert it into a day care centre, a seniors' centre, a rest home or

something. These guys can walk in and, with the flip of a pen, cost you \$100,000, and you do not seem to have much of an appeal. I take it that is the kind of thing you would hear.

10:30 a.m.

Since I am aware of the level of activity of inspection out there, it seems to me a lot more active and tougher than it was even two or three years ago. Are you anticipating you will generate more business than you can handle? Maybe you are going to need all 15.

Mr. Bateman: Without getting too explicit about the ebb and flow of inspection intensity around the province, I know that your area has undergone a slight change in the attitude of the fire department towards fire prevention. They have quite a stringent program compared with some other areas. We have high hopes for the appeal procedures built into the code, whereby owners can first request an informal review by me and my staff to see if we can resolve the problem, and if we agree with the fire department and uphold the order, then beyond that it goes to the commission.

Mr. Chairman: Could I get something clarified? It was our understanding your board has held only one appeal hearing so far, but I am hearing 40 or more appeals. Are they leading to a hearing or have they been satisfied or completed by the fire marshal's office without one? I am a little confused on the number of appeals and hearings.

Mr. Bateman: There are 47 pending. I am just glancing at this. I think three or four at most have undergone the informal review, as it is referred to in the Fire Marshals Act. My staff, the deputy fire marshal, reviewed them. I am not sure whether they will carry on to the Fire Code Commission. If we upheld the order, it is their right to do that.

Mr. Chairman: What about the other 43?

Mr. Bateman: They are pending right now.

Mr. Chairman: That brings up another question. Is it only the fire marshal's office that makes the original order, or is it a local fire chief?

Mr. Bateman: Every local fire chief in the province--there are approximately 640 of them--is an assistant to the fire marshal, again under the Fire Marshals Act.

Mr. Chairman: So these orders are right across the province by every fire department.

Mr. Bateman: Yes. In addition, any fire department officer who is engaged in fire prevention work is an assistant to the fire marshal. There are about 2,000 assistants. They all have the authority to make orders.

Mr. Chairman: Therefore, for example, the fire chief in

Norwich decides that some school does not have enough fire escapes and makes an order that it has to put in two more, and the procedure starts. Then if the school board disagrees, we go to the fire marshal's office. You have this informal review where you hack it out and you make some kind of order or decision. If they do not like that, then they go to the Fire Code Commission.

Mr. Bateman: Yes.

Mr. Chairman: It is a little misleading that you have had only one hearing, but you have a pile of these on the go.

Mr. Bateman: Yes, that is right.

Mr. Chairman: In 1985, you may have half a dozen or a dozen hearings that work their way through to the commission.

Mr. Bateman: Yes.

Mr. Chairman: This is falling out of Mr. Breaugh's line of questioning. If you are going to hold only one hearing a year, we might question why there are 15 people on a board. If you are going to have 10 or 15 hearings, it makes more sense.

Mr. Ritchie: Mr. Chairman, our next hearing has been established and is going to be in the city of Ottawa on May 14. At that time there will be two cases before the board, so I presume we will be handling one in the morning and one in the afternoon.

I see the position of the commission and the board. What we are dealing with must qualify as a proper laying of an order so when it comes before us we know that this order has been properly laid.

Basically, I think what we are trying to do, in the interests of both parties, is find a compromise if we can. If the appellant comes forward with a reasonable compromise, then I think it is the duty of the board to consider that very seriously. This is basically the area where I see the main thrust of the board function will be in looking for compromises.

Mr. Breaugh: One of the problems--it is really very aggravating in fact--occurs when someone starts up a business of any kind, whether it is day care, a restaurant or--

Mr. Cureatz: Hotel. I have had a couple of hotel businesses.

Mr. Breaugh: There is a bewildering array of folks who arrive at your door with impressive sets of credentials and an amazing ability to shut you down. Health inspectors, building inspectors and liquor licensing inspectors arrive. People from the Ministry of Community and Social Services arrive. The fire marshal walks in.

This person is trying to open up a day care centre or a hotel or whatever. All these people walk in the door with an ability to say: "You must do this and you must do it exactly this

way. Do not tell me that is an unreasonable way to proceed. I am the fire marshal, the building inspector, the liquor licensing inspector, the local health office inspector. I am telling you, here is an order; you have to do this."

The position they are put in is that even if it seems like the most stupid, unreasonable thing in the world to do, their choice is to fight all of these bureaucracies for the next four years or pay the money and start up a business. There is an awkwardness in the process here. It is compounded, for example, when the local representative of the fire marshal says, "Here is an order which says that door has to swing out instead of in," or "This wall is in the wrong place." You pretty well have to conform to that.

You are in the business of providing an outlet when they get unreasonable, but most people do not want to take on the Ontario fire marshal's office or anything like that. God forbid that some guy running a day care centre would say, "That is wrong," and two years later a fire occurs there and the same guy would probably come back in and say, "Now listen, if you had only followed my order and opened that door outwards instead of inwards, this kid would have been okay instead of having died in a fire."

How are you going to attempt to make this almost mindless bureaucracy that hits them appear to be something a little more reasonable? Have you given any thought to that? Have you informed people, for example, that there is a thing called the Fire Code Commission? When they walk in to inspect a premise, do fire marshals say, "Here is my order which says you must do this and this and if you do not like it, use the appeal route"?

Mr. Ritchie: I will try and respond to that as best I can. I have found, in inspection work in different municipalities, that sometimes inspectors do come on rather strong and go strictly by the book. You cannot go strictly by the book at all times, as far as I am concerned. When it has happened, I have appealed to the fire marshal and put the situation before him and said: "This is unreasonable. Here is an alternative that will cover the situation and it is not nearly as costly as this might be." There has always been a sympathetic ear.

In dealing with fire prevention people on your own staff, some of them are different. They are eager beavers who go out and they have the book. The first thing you know they have some small shopkeeper on the main street, who is probably struggling to meet his mortgage and pay his bills, facing a situation where it is going to cost him \$5,000 to \$6,000 to put in an exit facility or something along this line. The mentality of some people is: "Oh, he is a shopkeeper. He is making a million. No problem." In reality, he is not making a million; he is struggling.

What we have done is sat down and talked with him and said: "This has to be done. Have you any alternatives?" He said, "If you allow me to do it on weekends when the store is closed, it might take me two or three months, but I will do a bit each weekend and bring it up to your satisfaction." So we said, "Fine," and the order was stopped. This is the type of mentality that is going to

prevail with this commission. I think our main duty is to make sure the appellant walks out of that room with the feeling he has had a good and fair hearing by an understanding quorum of people. As far as I am concerned, I would lean towards his side. If there is a compromise, for heaven's sake let us go with the compromise.

Mr. Cureatz: The problems I have encountered also evolved around a business where they have borrowed money. The whole place was shut down. They teed up for operating on a particular date, usually the start of the month. The bank will be happy because the business will start having money. You seem very reasonable sitting there, but try dealing with the person who has issued the order. He starts yelling and screaming at me: "Who the hell are you? You are just a member of parliament. This guy is not going anywhere." In the few instances I have had, they have never informed--

Mr. Mancini: That is a good question.

Mr. Cureatz: That is right. I will have that problem later this week too.

Mr. Ritchie: It may have just a little bearing on it.

Mr. Cureatz: At the appeal process.

Mr. Ritchie: In regard to the Ontario Motel Association, I have a couple of friends in the business. Initially when the new regulations came out, they were up in arms, but today they are sold. I think a lot of it has to do with the chap the fire marshal has running it. That is John Hess. I hear nothing but good reports on him all through the Ontario Motel Association so I feel that area is being adequately looked after.

Mr. Breaugh: I think the problem is, when I see them they are mad. When I see people in this situation, they are not being reasonable. They are off the ground. They are yelling and screaming. They have fought their way through two or three bureaucracies. The bank is saying it wants some money. The rest of the family is asking when they are going to make some money out of it. So they are, I admit quite frankly, very unreasonable people. They are as mad as hell and they are not sure who to be mad at.

The last person in the door is somebody in a uniform with an order in his hand. At that time, they would probably pay \$20,000 to do anything you wanted to do so they could start to make \$2 a day next week. It is an awkward process at work here, saying to them: "Listen, you have a right to appeal to the Fire Code Commission. In three months' time there will be a hearing. Get yourself a crack lawyer or come in by yourself or do whatever you want." They look at you and start muttering obscenities and asking, "What do I do?"

Mr. Cureatz: You have to hire an engineer who has to look at your plans and that engineer has to stamp the plans and then you can take it to the appeal process. I have been the route.

Mr. Breaugh: This is the problem here. We are looking

for ways to expedite the process.

Mr. Bateman: Perhaps we can schedule a seminar for Oshawa.

Mr. Breaugh: Getting that impression, are you?

Mr. Rotenberg: Further to this question, you mentioned you have your next hearing scheduled for May.

Mr. Bateman: Yes, sir.

Mr. Rotenberg: It strikes me, if you follow along the reasoning of Mr. Breaugh, the citizens out there want to do something and the fire chief of the community comes in and says: "You cannot do that. You must make an appeal." This is the first of February. Why is the hearing three months from now? I think the hearing should be very quick if a person wants to get an order issued so he can proceed. In the situation Mr. Breaugh describes, a man wants to proceed with his business and, in his opinion, the fire chief is being unreasonable so he is appealing to your committee. He wants a decision next week, not three months from now.

Why is this hearing in May, why is it not this week or the week after? Is the applicant not in a hurry?

Mr. Bateman: They are not usually not in a hurry because they can proceed with their business until the order is disposed of one way or the other--

Mr. Cureatz: Oh, no, now wait a minute. The guy is trying to put a sliding door in a motel room and the other door is at the other corner of the room and it is not supposed to be there, it is supposed to be at the opposite end. He has to build five of these motel rooms and the fire marshal says, "No, you cannot do it that way; you have to rip out all the studding." You are going to tell me that we can wait for three months to have the appeal while it is the middle of winter?

Mr. Bateman: I did not want to overly complicate things. Nobody thinks they are simple, but they are even more complicated. Motels, of course, come under the Hotel Fire Safety Act not under the fire code.

John Ritchie can absolve himself of any potential responsibility for hotels and we take the whole responsibility, really. Except when liquor licences are issued, hotels are dealt with separately.

Mr. Rotenberg: We will forget hotels. Let us take another example where a man wants to open a business and goes to the fire chief to get his plan stamped and the fire chief says, "You cannot do that." He is stalled and cannot open up, or he has the business and for some reason the fire chief says, "You cannot proceed with your business until..." I would think that person wants a hearing next week. Can you do that if required?

Mr. Bateman: Those circumstances do not normally involve a fire marshal's orders so they do not normally involve the Fire Code Commission. You cannot say that in an order. The fire chief does not have the authority, unless it is under some municipal legislation, to prevent the opening of a business.

Mr. Breaugh: I just want to pause there. I would have to say I have a different perspective on that. I know that in many cases the actual authority is not there. It is odd, because I see both sides of the argument and I would want to support the fire department, the building inspector or whoever because they are just people trying to do a job. If it were one on one I suppose it would be fair, but that is not the problem. The problem is it is one against a whole bunch of folks, folks they have never met before who lead a whole different lifestyle than they do, who come at it from a totally different perspective and they just keep banging their heads against the wall.

As far as I would be concerned in my community, if somebody from the fire department comes into a building under construction and says, "That is not right," I would bet \$10 that building is not going to open up next Monday morning. There may not be absolute authority there, but I would guess that nine times out of 10 it will not open up.

It is not an academic argument and it is not something that will wait for three months. They do not get a licence to run the day care facility unless the fire department says that building is okay. You do not start up.

That is my problem and I seem not to have much of a way to respond to these people either. I can call the fire chief and we can have a talk and if he can, he will tell me who to talk to in the fire marshal's office and what we might do to expedite this problem. There is an ability for someone in a uniform--whether it is a cop or a fireman--or somebody in plain clothes from the Ministry of Community and Social Services wandering around--all kinds of people walk around my community--with an ability to shut people down. They are doing it every day.

Mr. Rotenberg: Like union leaders.

Mr. Breaugh: Yes.

Mr. Rotenberg: They shut people down.

Mr. Breaugh: Sometimes. Once in the last 10 years in Oshawa a union leader shuts something down.

Mr. Rotenberg: When they do it, they go big.

Mr. Breaugh: That is my problem.

Mr. Bateman: I agree, Mr. Breaugh. I do not think it is a problem, because I hear from an awful lot of these people too--

Mr. Breaugh: Sure.

10:50 a.m.

Mr. Bateman: I do not think it is a problem that is particularly relevant to the Fire Code Commission, not that I do not want to talk about it because I have the same sentiments as you do about ensuring adequate safety standards and the overall bureaucracy.

I sometimes get the feeling that everything is dependent on the fire department's approval and nothing can be done until it gives that approval. I think that is wrong.

Mr. Breaugh: You are not the total problem, just one of many.

Mr. Bateman: We would like to operate independently of the others, but so often we get frantic calls that building permits cannot be issued and, as you say, licences cannot be issued and the public health officer's approval cannot be issued until the fire safety approval is given.

Mr. Watson: Are your plans not up at the stockyards?

Mr. Bateman: We have moved.

Mr. Watson: You have moved. Does that mean plans are going ahead faster?

Mr. Bateman: They were for a time, but we have two engineers in hospital and two quit for more lucrative positions in the public sector, so we are in bad shape.

Mr. Breaugh: To finish this, I have some sympathy for both the bureaucracies and the people. When I see them in my office, they are not rational people. I would not want to have to deal with those folks all day, every day either. I would get uptight and start going by the book a little more than I do. However, I think there is a general problem with agencies such as yours that we as politicians probably have to sort out one of these days.

Let me flip to another thing that is of interest to me. I have long been a follower of how we look after things that have to do with fire departments, fire marshals and all that. I have long been confused by the fact that, even when we identify that there is a problem we ought to do something about, we seem to have virtually no ability to respond to it.

Close to 10 years ago now when I first began doing this, I recall that we looked at highway safety and the transportation of goods. One of the things we came upon was that a lot of fire departments were responding to fire calls when they had no idea what was inside the building or the truck. We thought: "This is simple. We will get a label and stick it on the outside of the truck saying what is inside, or we will have a warehouse post a notice telling us what is stored in the warehouse."

We still have not been able to do that. There have been lots

of governments and bureaucracies, but whether we are talking of labelling explosive materials or what is stored in a warehouse, or whether we need to do something about rooming houses, we do not seem to have identified much in the way of an effective mechanism to respond to all that. Ten years after the fact we are still trying to respond. Have you any hope the commission will be able to identify problem areas such as that and move the thing through?

Mr. Cureatz: Did we not have a committee before us that was centring on those kinds of problems?

Mr. Breaugh: We have had committees and commissions.

Mr. Cureatz: They were saying that when you get to the international scene, you get the problem of illiterate people working at the ports who do not know what it is all about.

Mr. Breaugh: For example, the transportation of dangerous goods is one has been hung on the vine for about a decade or so because somebody has been trying to agree on an international symbol. Meanwhile, the goods keep flowing through everybody's community and are stored in warehouses and all that.

Have you any hope that you might be of use to the world by identifying such areas. You would run up against them when someone was issued an order to do something where the fire marshal's office thinks it would be a way to resolve the problem and they do not?

Mr. Bateman: I do indeed have hopes. I have been a little impatient just as you and many other people have. First, we have been waiting for the federal legislation. It is obvious why that is important; it has to be standardized across the country and it is desirable it be standardized across the world. I think the Ontario legislation is imminent. We will have a standard system of labels and they will be called up in the fire code as a regulation.

The commission does not deal with charges laid under specific regulations. Hypothetically, if a fire extinguisher or a fire alarm system malfunctions and the owner does not do anything about it, the fire prevention officer would lay a charge under the fire code. That would be appealable through the courts, of course, but it would not be appealable to the commission. There is really no point because the fire code says it must be maintained. It is just orders on the broader issues that the commission would hear.

You mentioned lodging houses. We have a section on rooming and lodging houses in the fire code now, and I am anxious to hear how the building involved in the fatal fire yesterday in Toronto complied with the regulation.

Mr. Breaugh: That is my frustration with the system. Every once in a while a rooming house will burn down. Someone dies in the fire and there are all kinds of property damage. We get all concerned about it and we respond in what we think is a reasonable way, but then it happens again. When we go back, we see they did not conform or, in a lot of cases, they did conform. For some

reason they were excluded or there was no inspection done.

It is the same with the high-rise buildings. A couple of years ago we had some high-rise fires in Toronto. Everybody got all excited and we established commissions and so on, but I do not think high-rise buildings in Toronto are much safer today than they were two years ago.

I do not think very much has been done. We have written a lot about it and we have studied it a lot, but are they any safer? I doubt it, and I doubt they ever will be.

I am looking for a mechanism that would identify these things on a more regular basis and prod the system to make the system work a little faster.

Mr. Bateman: High-rise buildings is one of the areas that we intend to bring into the fire code under retrofit. They are safe--safer than rooming houses; safer than low-rise, put it that way.

You are right, I agree. I would like to have the ability to investigate in greater depth more fires than we do. We are doing a thorough job on that rooming house fire on Dawes Road. Fatal fires, but very often relatively minor fires, can tell us an awful lot about the potential for disaster, for fatalities.

Mr. Breaugh: Is it your intention to publish an annual report of appeals you have heard or problems that you see, and that sort of thing?

Mr. Bateman: Yes.

Mr. G. I. Miller: We have had a couple of fatal fires in our riding of Haldimand-Norfolk. One was in Haldimand, a cottage-type home. One was in Waterford; it was a town house. Do you make recommendations to the area fire department on a regular basis? Have you investigated them?

Mr. Bateman: Yes. We investigate all fatal fires. If there is an inquest it is the coroner's jury that makes the recommendations. If there is no inquest, we involve the local fire chief in our investigation. If there is something special or unusual about it, then we specifically advise the local authority.

Mr. G. I. Miller: Does that take place anywhere in Ontario?

Mr. Bateman: Yes.

Mr. Breaugh: Just in conclusion, could you give me a little idea of--I am taking the point of view that you are just beginning to sort out all of the startup problems any agency such as yours has. That may be why the world is not too familiar with this commission yet.

How do you intend to make the world aware that you are present, that you are serving a particular function and that you

may serve a somewhat broader function?

For example, if I look at the way you have functioned so far, I would really say a commission which has been in operation for more than a year and has made only one decision so far and is going to respond in another two or three months with yet another hearing, or maybe even two, is not too hot. I would say, "This one sure is grinding to a halt in a hurry."

11 a.m.

Is it your intention to go around Ontario, hold these hearings, tell people that you are available, publish an annual report and make recommendations to the government? Do you envisage that a year from now you will be far more active and far better known? How do you intend to do that?

Mr. Bateman: What we do now is to advise the owners at the time they receive the order--in fact, it is printed right on the order--of the appeal mechanism. Fire departments have pamphlets on the Ontario Fire Code that make reference to the Fire Code Commission.

As for a high-profile publicity campaign on the commission itself, I am not convinced it would achieve beneficial results; I guess am not convinced it is needed. The only difference between the commission and the way we operated in the past is that instead of the fire marshal hearing the appeals we have a little more democratic cross-section of the population to hear them. There has never been very much publicity about the fire marshal hearing appeals on fire marshals' orders. I can ask anybody at a party whether he knows that I hear appeals, and he is still sorting out whether I actually fight fires or not.

I would welcome any advice on this because we are still at our puberty stage. We certainly can crank out more publicity, but to be honest, we had not really planned to make the work of the commission much more widely known to the public than it is now.

Mr. Breaugh: For what it is worth, I really want to encourage you to do so. Please get me straight. I do not encourage people to run out and do big television ads saying: "Here is a commission brought to you by the wonderfulness of Ontario. The new minister is..."

But I do think it is important for people to be aware that the system does not end with somebody walking in wearing a uniform and carrying what looks like a penalty book in his hand; that there really are other components to it; that you are active in the field; and that you can poke and prod along, identify problems, make us more aware of them and get governments to turn the wheels over, which is one of any government's great problems.

I will let you alone for a while.

Mr. Mancini: Mr. Chairman, there are just a couple of matters I would like to bring to the attention of the fire marshal. I am not sure whether it is gratuitous or not, but I

would like to bring a couple of specific cases to his attention and have him send letters from his office if possible.

Within the last two weeks the St. Louis Separate School in Leamington, part of the separate school system in Essex county, was holding a retreat. Approximately 60 or 80 students were in the gymnasium taking part in this retreat when a fire started, possibly on the roof of the building. There was great difficulty in getting the students out of the building because the doors had been chained shut. The fire department, I believe, was able to get at one exit easily; at another exit it had to remove quite a bit of snow, but fortunately all the students, staff and parents were removed from the school without anyone being injured.

As this story was reported in the daily press on a continual basis, it was stated by officials from the separate school that this was an isolated incident and that they do not usually chain students in during these retreats. However, a former janitor of the separate school, now working at another location, said that this is common practice and is done all the time.

Why they would do this, I do not know. Anyway, I think the severity of the situation possibly requires a contact by yourself to the fire chief in the area to ascertain more details of this situation, and possibly a strong letter from yourself to the school board saying, "This is unacceptable."

While I fully support the idea of the retreat and that you have to keep people out of the building because you do not want people coming in to disrupt what is going on or leaving unnoticed and getting lost or something, there has to be some middle ground in chaining the doors and not allowing the service of the fire department in to do their job.

Mr. Bateman: I am sorry. When was that?

Mr. Mancini: It was in the last couple of weeks.

Mr. Bateman: Thank you. We will follow up on that.

Mr. Mancini: I think the severity of it warrants your involvement somewhat.

Mr. Bateman: Yes.

Mr. Mancini: The other matter I would like to bring up is the issue of trailer homes--the trailer park with mobile homes or prefab homes would be the better term. There is a prefab home park right in my constituency. We have had several fires there. When they start, it is just like a matchbox. There is really no hope.

Several years ago a small child, unfortunately, lost her life in a trailer home fire. I called the office of the--

Mr. Bateman: Fire marshal?

Mr. Mancini: No, the fellow that does the inquiries.

Mr. Bateman: The coroner.

Mr. Mancini: Yes. I called the coroner's office, thank you, and asked that a coroner's jury be set up to see if anything could be done to improve the situation in these trailer homes. There are 400 or 500 of them in a small area. There are a lot of people. The unfortunate loss of life was very tragic in this situation.

A coroner's jury was held and there were several recommendations made about the structure of the mobile homes and how they could be made safer. One of the jury's suggestions was to use different material on the inside of the prefab homes. Of course, nothing is ever done about these things. Recommendations are made, but as far as I know, no one has ever pressed the industry to make these homes more fireproof.

We have had other fires in trailer parks. In the area I represent, fortunately, there has not been any more loss of life. However, as far as I am concerned, it is just a matter of time. Because these things explode into a fireball, it is just a matter of chance whether someone is going to be in there or not, or whether a small child is going to make his or her way out of it.

I am very concerned. I am not sure what we can do about the existing ones, but we cannot continue to have these homes put on the market when all of us sitting here know very well they are firetraps. I am not trying to criticize you at all, but someone may be shirking his duty by not demanding--

Mr. Bateman: By making them stronger.

Mr. Mancini: Making them stronger, right. Sorry about that. At any rate, these homes in their present form should not be allowed to continue on the marketplace. I realize they are serving a need to a part of society that cannot afford the conventional-style home, or a part of society that wants to move into this type of home for retirement purposes, or use them as starter homes or what have you.

Taking all that into consideration, we talked about, not nursing homes but--

Mr. Bateman: Boarding homes.

11:10 a.m.

Mr. Mancini: Boarding homes, yes. Some of us feel in many areas they are firetraps. Those boarding homes are far safer, even with the many defects they have, especially the older ones, than the trailer homes. Having a trailer home park in my constituency has allowed me to see at first hand what happens. I have a very strong view on it. I think the code should be strengthened as far as trailer homes are concerned.

Mr. Bateman: I appreciate that too. I will talk to Dr. Ross Bennett, the chief coroner.

Mr. Mancini: He was not coroner then, was he?

Mr. Bateman: No. It was Dr. Cotnam at that time. I do not recall that fire right now. I suppose if I were glancing at the files it would come back to me. The Canadian Standards Association has a standard on mobile homes that applies to many of them; I am not sure it does to all. However, I will look up the recommendation and see what has been done and what can be done if nothing has.

Mr. Mancini: The third area I wanted to touch on has already been brought forward by a couple of my colleagues. It has to do with the hotel and motel industry and the fact that on many occasions they feel under a great deal of pressure from the fire marshal's deputies.

Mr. Bateman: It is my staff, I think.

Mr. Mancini: I know, but you referred to all the other fire chiefs as your assistants.

Mr. Bateman: Yes.

Mr. Mancini: They feel under a great deal of pressure from your assistants even though I am sure they are trying to do an honest job.

However, there is a point I would like to raise here. I will give you a specific example. A few years ago in Leamington a group of people got together and built the Pelee Motor Inn. They brought together a large sum of money to do this. In my view, as soon as your assistant saw there were new people building, there was not enough money to spend. This and that had to be changed, this had to be torn down--really, thousands of dollars of expense were incurred.

Eventually this business changed hands. When the new owners came in, the same thing happened all over again, such as having to tear a door down.

I remember staying at one of the suites for a weekend. It is built in a square. Everyone overlooks the minigolf, or whatever they have. This room overlooked the swimming pool too. It actually had wire mesh over the window overlooking the courtyard. I said: "Why do we have this wire mesh here?" They said: "It was demanded by the fire chief." There must be some logic to it, but it seemed ridiculous to me.

When I brought it up, they figured they had their member there and he asked this question. They were going to let me have all the information. They took me around; they had had to put this door in, take this off, and meet all these demands. They said: "Why do they not go down the street to this particular hotel that is rat-infested and should be torn down? Why does the fire chief, or the assistant to the fire marshal, not go in and demand just the minimum standards from that hotel or that lodge? Why is it that when a new group of people, or new proprietors move into a building and try to fix it up with the limited amount of money

they have, they always feel the full brunt of the fire marshal's code?"

Maybe they overstated their story, but in many cases I have found that to be true. When new people go in they really feel the full brunt of the code. If you have been there for a while and your building is somewhat dilapidated, well, things just go on as normal. I was wondering if you have found that to be true.

Mr. Ritchie: I would just like to back up a little. Prior to building, he goes to the building department with his plans.

Mr. Mancini: That is right.

Mr. Ritchie: It approves them or recommends changes. Then the fire department has a look at them. They have their input prior to somebody building; they do not come along when he is halfway up or that sort of thing. At that time they have dialogue, I presume, as to why the fire department wants this or why the building department wants that. I would feel at that time they would come to an understanding.

Mr. Mancini: The way it was explained to me, this is done during the course of construction, after the blueprints are done and even after construction, particularly when the building changes hands for the first time.

Mr. Ritchie: That is poor liaison between the building department and the fire department. I would be very upset too.

Mr. Mancini: They were. They had spent quite a bit of money.

Mr. Bateman: I was going to make the same point as Mr. Ritchie. The hotel fire safety regulations are essentially the same as the Ontario Building Code, which has been in effect for about 10 years. It should not happen. When you get building permits, they should comply with the hotel legislation.

Mr. Cureatz: I ran into a situation where the building department said: "We have nothing to do with the fire department. We have approved it as structurally safe. As far as we are concerned it will not fall down. As to whether it is approved in terms of being a fire hazard, we wash our hands of it. It has nothing to do with us. All we can do is say that the two by fours are in the right place, the header is in the right place and the door swings open. That is fine with us."

A guy piles a ton of money into it and then the fire marshal comes by and says: "You have to rip it all out because the door is not supposed to be there. It is supposed to swing in and not out, or out and not in." It sure was crazy to me.

Mr. Mancini: That is exactly what I am trying to say.

Mr. Ritchie: I suggest you ensure that the building department and the fire department in your municipalities work in

conjunction with each other, that they look at the plans together so that one is not pulling against the other and that both agree in unison.

Mr. Mancini: I think in future I will just have them send you a letter.

Mr. Cureatz: That is what I am going to do. You can deal with them.

Mr. Mancini: Most businessmen are very reluctant to get into a struggle with the local fire chief, who is probably trying the best he can to do his job. They are reluctant to have those people get into a real conflict with them when they know they have to work together. Since the Liquor Licence Board of Ontario is also involved, they say, "I do not want to take the chance of offending those guys because my licence can be pulled if they think the building is unsafe." It gets to be very messy.

In my experience, I have found that when dealing with government a lot of people tend to accept a lot of things they would normally fight because they do not want to cloud future relations. They want to be in business for a long time and they want to be able to be able to co-operate in the future.

I am going to take your business card, and in future I will say to them: "This guy is very concerned. He will look after your problems." Perhaps we will then have letters coming from you people to the building department and the fire chief. I think Mr. Cureatz hit the nail on the head earlier when he said: "I have a letter from the MPP; so what? I am following the fire code. Why in hell is he criticizing me for when I am following the laws passed in Ontario?" It puts us in a very poor position.

Last year the Knights of Columbus in Leamington were very upset because all of a sudden someone inspected their building and it was not safe. They had to spend several thousands of dollars immediately. After some negotiations it was decided it would take three or four years to make all the adjustments. However, they probably have a far safer building than some of the hotels I drive by going to my constituency office or driving around my constituency.

For the life of me I cannot understand why some of those dilapidated buildings are ignored in that manner. They are ignored either because the people who own them could never afford to fix them up in 100 years and people know that or because of some other reason. Perhaps the offices are too busy; I do not know.

Mr. Bateman: They are on our computer. We will get them.

11:20 a.m.

Mr. Rotenberg: I have a minor point. There is a new procedure so that when a fire marshal or fire chief gives an order, the order now is appealable to your commission. When they give an order, is there something in your regulations that applies to all these assistant fire marshals so that the order says, "This

order can be appealed to the Fire Code Commission"? Is there a notice given right on the order that there is an appeal process?

Mr. Bateman: Right on the back, yes, is the appropriate section of the act. Actually, I think in the new ones it is spelled out in layman's terms.

Mr. Rotenberg: That is what I wanted. All notices should be spelled out in layman's terms if they have the right to appeal.

Mr. Ritchie: This is the order.

Mr. Rotenberg: This has the notice on the back, the right to appeal. That is fine; that is what I wanted to know.

Mr. Watson: One of the things I noticed is the time during which a person can make that appeal. Is that 10 days?

Mr. Bateman: Yes.

Mr. Watson: Is that a reasonable time or is that a problem? Would you turn somebody down for a hearing if they did not get their appeal in within 10 days?

Mr. Bateman: Over the past 20-odd years that I have been with the office, we have had the same time period for appeal to the fire marshal. I think maybe once or twice we have turned someone down when it had been 30 days, or something of that order. Ten working days is generally enough. If they verbally discuss their intention to appeal with the fire chief or with our office, we will accept that; so it has not been a problem.

Mr. Watson: Is the function of this commission essentially the same as the fire marshal had in the past? You say there was an appeal process before this commission came in.

Mr. Bateman: Yes.

Mr. Watson: Is the process essentially the same except that now we have a so-called independent commission? I assume the commission feels it is reasonably independent.

Mr. Bateman: Yes. The only other slight modification of the process, I suppose, is that there is this informal review provision where the owner would get together with me or the deputy fire marshal and we would see whether we could resolve it without taking it to the commission.

Mr. Watson: I realize you have not had much experience, but is it the commission's intention to hold these hearings on a fairly informal basis so people can come in and argue their own cases, or are you going to have to hire a battery of engineers and lawyers to defend your point of view? Are you going to say to the people, "You do not have an engineer's report and we have, so I am not going to listen to you"?

Mr. Bateman: No. Either way is acceptable. The appellant can argue his own case or he can bring legal counsel with him to

argue his case. At the first hearing, the appellant was his own witness.

Mr. Watson: I am concerned that where we set up groups of people to hear appeals, they tend to become a bureaucracy unto themselves and become very officious.

Mr. Bateman: Ours is very informal.

Mr. Watson: I hope the intent of this is that when it is necessary for a large appeal, a 20-storey apartment building with an order on it, it is going to mean a lot, but I am also thinking of the small businessman or a family business where he does not think it is reasonable. Are you prepared to hear both of these?

Mr. Bateman: All the members of the commission bring that point of view to their positions. That has always been the case in the past when I and my predecessors have heard orders under the Fire Marshals Act.

Mr. Watson: It is my understanding that you are giving your inspectors in the office of the fire marshal a little more latitude now in terms of interpretation than was the case a couple of years ago.

I guess we all have these horror stories. I can point to the new courthouse in Chatham where there is a hallway with an emergency exit for the judge. There are two outside doors 10 feet apart because the fire code used to say--I do not know--50 feet, and the door that was there was 60 feet. We did not have an appeal process, but we paid for putting in another door. To have two outside doors in the same hall 10 feet apart when there is one person to get out in case of a fire is pretty ridiculous, but it was one of the things.

It does not matter whether it is a nursing home or something else. There are things that never get to appeal where somebody says, "Hey, that is what the code says and there is no leeway." I do not think this is the first time we have discussed this, and I understand there may be a little more leeway being allowed now.

Mr. Bateman: The Chatham courthouse is a new building--

Mr. Watson: It was remodelled.

Mr. Bateman: --and it came under the building code. I know building codes are written by people who are not infallible, and they write the code based on some sort of preconception of how a building would look. It seems reasonable at the time, then some other condition dictates radical changes and you come up against the law because it is enshrined in the code, which is a regulation.

There is more latitude now in the building code. The fire code also provides fire departments with somewhat more latitude, because prior to the fire code coming in, fire department inspectors tended to use the building code, which was intended for new construction, as their guideline for inspecting existing buildings. That has not happened as much in the past couple of years.

Mr. Charlton: I would like to discuss for just a moment a specific issue that has concerned me for some time. You will probably recall that a number of years ago we had a major fire in Hamilton at the Wentworth Arms Hotel. I have no way of knowing how accurate the press reports of that fire were, but basically it was reported that the extent to which the fire spread and the difficulty the fire department had with extinguishing the fire were a result of its being a very old building that had been renovated a number of times, where there were all kinds of false walls and false ceilings. The fire was moving through those doubly and triply protected areas.

I am just wondering, first of all, has that kind of situation been dealt with in the fire code? Do you have regulations now about that kind of thing to prevent the situation where you have several layers of wall or ceiling or both? Have we dealt with stopping the occurrence of that kind of situation in the future?

Mr. Bateman: It was really dealt with then, in the hotel fire safety regulations, and it is now. There was not the separation required between floors, and the surface flammability of the lounge area where the fire occurred did not comply with the act at the time.

Interjection.

11:30 a.m.

Mr. Bateman: Does it comply now? What has changed? I guess I am asking for it from the other side now, but the level of enforcement in hotels has improved since the Wentworth Arms fire and particularly since the Inn on the Park fire. There were three fires over a number of years that cranked up the hotel inspection program we have in place now. Yet I would have to say yes, that situation is being dealt with.

Mr. Charlton: From the perspective of any renovations that are being done?

Mr. Bateman: That is right, any renovations.

Mr. Charlton: Has anything been done about what are likely to be dozens--perhaps even hundreds--of similar situations around the province where those kinds of renovations have already been done?

Mr. Bateman: As well as we can. It is often not very easy. Looking at this wall here, I am not sure whether that is a wood stud partition that goes right up into the roof space of the building here. It is often not readily apparent, and I suppose there has to be some excuse to punch a ceiling tile out of position to see what is above. For example, if the ceiling in this room is eight feet and the ceiling in the next room is 10 feet, then you know there is a space there that could be a problem. All our hotel inspectors are certainly aware of that condition.

Mr. Chairman: May I ask a couple of questions? With

regard to the makeup of the commission, I do not necessarily want to know the people's names, but who is on the commission? Is the fire marshal himself on the commission?

Mr. Ritchie: No.

Mr. Chairman: Is there anyone on the commission who might be considered a professional firefighter?

Mr. Ritchie: Ex?

Mr. Chairman: No, not ex; a current firefighter.

Mr. Ritchie: No, sir.

Mr. Bateman: No. There is a provision in the act that precludes public servants, at the municipal, the provincial or any level, from serving.

Mr. Chairman: Fine. I thank the clerk for getting us photocopies of your order form with the notice on the back about the 10-day appeal. While I note that there is a 10-day appeal against an order, it is my understanding that you do not have any time limits in your act for the service of your decision upon the appellant. What are you following? If there is no exact length of time within which it must be delivered, what are you doing and what are your procedures?

Mr. Ritchie: The general feeling initially was that, where possible, we would give a verbal decision the day of the hearing. If that was not possible, then as soon as possible the decision would be put in writing and mailed. In the one case that we held--I think we have it here--it was approximately two weeks before the decision was mailed.

Mr. Chairman: Two weeks. At this point, however, nothing is stopping you from taking two, three or four months.

Mr. Ritchie: It is unlikely, but your statement is correct.

Mr. Bateman: Our view on that, and we have thought about it, is that in every case I am aware of we do not really get orders on these situations where licences and openings are withheld on buildings that are functioning, so they do not impose a hardship on the building owners.

If we did find this was the case, we would certainly change it. I would not object to some provision being written into the act.

Mr. Edighoffer: On what date were the 15 people appointed?

Mr. Bateman: They were not all appointed on the same date. When were you appointed, Mr. Ritchie?

Mr. Ritchie: October 27, 1983. At that time, there were

four other people appointed besides myself, which made five. At intervening periods the number was increased to 15.

Mr. Edighoffer: Have the 15 served a year or more?

Mr. Bateman: Very close to a year. By next month, all will have served a year.

Mr. Edighoffer: When they are appointed, they are appointed for one, two or three years?

Mr. Bateman: Yes.

Mr. Ritchie: But some chaps who were appointed for one year, whose year is now up, have been reappointed.

Mr. Edighoffer: I do not think it was made clear during the discussions. Could you give us an idea of what the cases were, the one case you heard and the two cases that are coming up?

Mr. Ritchie: I have no idea what the two cases coming up will be. We do not get any material until we sit down.

Mr. Bateman: We do not want any prejudice being brought in.

Mr. Ritchie: The case we heard concerned a low-rise apartment building. I believe it was two floors, comprising about 10 or 12 apartment suites. There was a manual gong fire alarm system. Someone discovered a fire and ran out and pulled this rope, which sounded the alarm throughout the building. The fire department realized that was not adequate. On top of that, there were a couple of open interior stairways, so the fire department was asking for an electrically supervised fire alarm system with heat detectors placed strategically throughout the building.

The committee's feeling was that it would be necessary to install at least one smoke alarm, which could be battery operated, in each apartment suite to compensate for the open interior stairways. We felt the occupants should have as much warning as they could of a fire occurring in their suite.

Mr. Watson: With groups such as yours, one of the questions--I realize you have not had a lot of experience--is whether the terms of reference under which you operate are adequate. Do you see any changes needed from the commission's point of view? Sometimes we do not ask. Do you see the terms of reference or the legislation under which you operate as being satisfactory?

Mr. Ritchie: Yes, initially. I am sure as we go along and get our teeth into this program the point you raise will probably be pertinent and we will have dialogue in that area.

Mr. Watson: You do not have anything now? You do not foresee anything?

Mr. Ritchie: One thing I would like to see is the

committee members, once they are selected for a hearing of the commission, probably a day prior to the hearing, getting individual copies of the order with which they have to deal, not to discuss it among themselves, but to look at the order and see what the problem is. Then, when they convene, at least their minds will be functioning in that area.

At our first hearing we sat down, the order was there, and we went from scratch. Maybe that is necessary, but I do not believe that holds true for all commissions.

Mr. Bateman: We can change it, John.

Mr. Ritchie: Yes. I do not think it violates any law by being individually served, as long as we do not discuss it with each other prior to the commission sitting.

Mr. Watson: I wanted to give you an opportunity to say that as a commission you do not have opportunities to do things because of certain restrictions that are put on you. That is not the case, I take it.

Mr. Chairman: Do you have any advisory role on the fire code or possible changes, or do you think you should have?

Mr. Ritchie: Changes to the fire code?

Mr. Chairman: Yes. Perhaps not at this point, but as you say, as you get into this, more hearings, more appeals, do you think you could perform the function of an advisory body?

Mr. Ritchie: I would think so.

Mr. Bateman: As I recall, that came up; I have forgotten whether it was in estimates. The fire code had a prolonged, agonizing birth. We had a number of discussions on it. During one of these discussions, that was raised by someone. At that time I indicated that we hoped they would perform an advisory role. Their decisions would constitute quite a valuable reference document for updating parts of the code.

Mr. Chairman: That appears to be the end of questions. Thank you for appearing before us. Unless the committee has anything else, we will recess until two o'clock this afternoon.

The committee recessed at 11:43 a.m.

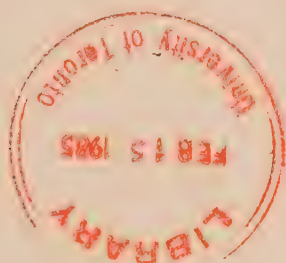
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STANDING COMMITTEE ON PROCEDURAL AFFAIRS

REVIEW OF AGENCIES, BOARDS AND COMMISSIONS:
TRAVEL INDUSTRY COMPENSATION FUND

WEDNESDAY, FEBRUARY 6, 1985

Afternoon sitting



STANDING COMMITTEE ON PROCEDURAL AFFAIRS

CHAIRMAN: Treleaven, R. L. (Oxford PC)
VICE-CHAIRMAN: Watson, A. N. (Chatham-Kent PC)
Breagh, M. J. (Oshawa NDP)
Charlton, B. A. (Hamilton Mountain NDP)
Cureatz, S. L., (Durham East PC)
Edighoffer, H. A. (Perth L)
Kells, M. C. (Humber PC)
Mancini, R. (Essex South L)
McNeil, R. K. (Elgin PC)
Miller, G. I. (Haldimand-Norfolk L)
Rotenberg, D. (Wilson Heights PC)
Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Clerk: Forsyth, S.

Assistant Clerk: Decker, T.

Staff:

Eichmanis, J., Research Officer, Legislative Research Service

From the Ministry of Consumer and Commercial Relations:

Caven, D. N., Registrar, Travel Industry Act

Simpson, R. A., Executive Director, Business Practices Division

Witness:

Lehner, F., Vice-Chairman, Travel Industry Compensation Fund
Board of Trustees

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON PROCEDURAL AFFAIRS

Wednesday, February 6, 1985

The committee resumed at 2:12 p.m. in room 228.

AGENCIES, BOARDS AND COMMISSIONS:
(continued)

TRAVEL INDUSTRY COMPENSATION FUND BOARD OF TRUSTEES

Mr. Chairman: Gentlemen, seeing a quorum present, perhaps we can get going with this afternoon's hearing.

We have with us the Travel Industry Compensation Fund board of trustees. Perhaps you gentlemen would come up to the end. We have Messrs. Lehner, Simpson and Caven. You can decide between yourselves who is going to be the spokesman and perhaps identify each to the others and to the committee.

Mr. Lehner: I think I will probably be the spokesman because I am here, as the vice-chairman of the compensation fund under the act, for the president who was unable to come.

I am Fred Lehner. I have owned and operated Lehner Travel Service for 25 years at 2 Carlton Street, but I am here as the vice-chairman of the fund.

You might want to know something about it.

Mr. Chairman: First, I might advise the committee that Mr. Simpson is in the middle; I know he is the executive director. Mr. Caven is the registrar of the travel industry branch. Might I ask, Mr. Simpson, that is not your only "occupation," is it? You are with one of the ministries.

Mr. Simpson: I am with the Ministry of Consumer and Commercial Relations.

Mr. Chairman: Yes. I thought so. I just wanted to identify that.

Mr. Simpson: I am a member of the board of trustees as well as with the compensation fund.

Mr. Chairman: I take it your capacity as a member of the board and the executive director flows from your position with the ministry.

Mr. Simpson: Yes. Under the Travel Industry Act, I am the individual who is called "the director," and I have a variety of statutory powers and duties under the act connected with the fund.

Mr. Chairman: Fine. Thank you. I am sorry, Mr. Lehner; I just wanted to clarify that. Would you carry on?

Mr. Lehner: Mr. Caven is the registrar administering and overseeing the fund and the execution of its regulations. That is it as far as the introduction of the three of us is concerned.

Mr. Chairman: Do you have an opening statement of some kind with you?

Mr. Lehner: Yes. I thought you might want to know something about how the fund came into being and the purpose of the fund.

The Travel Industry Act of 1974, which was passed in 1975, was the first time that travel was regulated in any form in the province. Before that, anybody who felt so inclined could act as a travel agent, hang out his shingle, call himself a travel agent and start business.

In travel, large amounts of money are accumulated for expenses, trips for groups of tourists, for charters. Until about 10 years ago, when the act was passed, these moneys were not protected in any way in any statutory form.

About 33 years ago, when I started in travel in Toronto--working for somebody else at the time--this may not have been quite as necessary as it has become since then, because at that time there were maybe two or three dozen agencies in the city, if there were that many, compared with about 1,400 agencies in greater Toronto and 2,600 in Ontario.

As travel increased by leaps and bounds, naturally the accumulation of money also increased and travel became a very popular consumer item, shall we say.

About 15 years ago, travel by affinity charter was very popular. Students started to travel in large numbers to far away places. Anybody who wanted to organize anything in travel could do that, which meant that if a high school student wanted to organize travel for his fellow students to some place, he could do so, take their money and act as an entrepreneur, if you will. Choirs, football clubs, social clubs, and church groups, etc., were doing the same things, very often for the benefit of their members but sometimes largely for their own benefit.

When bankruptcies became more frequent and when absconding with money became more frequent, both the travel industry and the government started thinking about what to do about it, and voices were heard calling for some sort of regulation.

3:20 p.m.

The government, after examining this situation and consulting with representatives of the travel industry, enacted the legislation known as the Travel Industry Act, 1974, in 1975. Part of this act established a trust fund to compensate or indemnify people who had paid and who are paying moneys to travel agents, who do not receive value for their money.

As of 1975, anybody who wanted to sell travel in any way,

shape or form, either as a retailer or as a wholesaler--and these are two distinct categories--had to be licensed. Only if a consumer is dealing with a registered travel agent, a registrant under the fund, is this person is entitled to a redress. No person is now allowed to act as a travel agent in Ontario without being licensed.

You may be interested in the registration fee; it is \$200 for two years. To join the fund, as it were, a prospective and new member has to pay \$2,000 into the fund--as his startup contribution, you might say. Now there is a requirement for new agents opening shop that at least one of their personnel must be knowledgeable in travel, and it must be proved so. In other words, he or she must have a track record of having worked in an agency and professional proficiency.

The trust fund is administered by National Trust--National Victoria and Grey Trust Co. now. This is where the fund is being maintained.

The trustees under the fund meet every two months to decide on the applications before them, which have been received and processed by the registrar, as to whether they fall under the act. This is really the function of the board of trustees under the trust fund.

Mr. Chairman: Thank you. I would just ask this question before turning over the floor. Would it be fair to ask, if a brick fell on Mr. Simpson's head today and a new director had to be appointed tomorrow, would that new person also come from the ministry?

Mr. Simpson: Yes, Mr. Chairman.

Mr. Chairman: So in a way you are "the government watchdog." Is that your function? I am putting it in very crude language, but are you the government watchdog on this board or in this industry?

Mr. Simpson: That terminology is probably accurate. We will probably see, as the afternoon unfolds, that through the workings of the regulations and the claims processing function of the board of trustees there is a relationship of a continuous nature.

Mr. Caven is the registrar working with the industry, with the board of trustees, in all aspects of the fund. I would characterize it as a rather large team. I do not have to watchdog them because we are all involved in solving consumer problems. It is an ongoing, very close kind of thing. It is a very close-knit industry overall.

Mr. Rotenberg: In your job with the ministry, your duties are more than the travel industry?

Mr. Simpson: Yes.

Mr. Rotenberg: So this takes some small part of your time?

Mr. Simpson: This is one of 12 statutes I am involved in, that I preside over.

Mr. Breaugh: I have a couple of questions that come to mind.

Mr. Rotenberg: Do you promise only a couple?

Mr. Breaugh: Since the intervention, no.

I wanted to see if we could pin down exactly what is meant by "services" under this act. I think the obvious ones that most of us would be familiar with would be someone who was stranded somewhere; the fund is there to help get them back.

What about people who buy a package vacation, get there and find there is no room at the inn and are forced to stay in the lobby? Are those people eligible for any compensation under this fund?

Mr. Lehner: It depends entirely on the circumstances. Basically, I think it should be pointed out that people are being compensated for claims in substance and not in quality.

Of course, if there is absolutely no room at the inn, there might be room for compensation applied for, depending on what happened to them, of course.

Mr. Breaugh: Could you just expand on that a little bit? For example, if I bought a package tour to Jamaica, or wherever, and when I got there I found there was no accommodation available for me because the agent or the hotel had overbooked--no matter who was at fault--could I be relatively sure someone would compensate me?

Mr. Lehner: As long as the client was sure to exhaust all the possibilities. It might happen that a client is in Jamaica and there is an overbooking situation, which happens in many places. The hotel manager might say, "We will put you up for two nights a block down the road and after two days you can come back to us." The person making a claim might say, "I did not get the services provided for."

One would have to consider whether or not he did get the services he contracted for, because in each of the folders, I am sure, you will find something to the effect that substitutions may be made if necessary. That is a common clause in travel folders. So one would have to be careful as to what is a claim in substance and what is a claim in quality.

Mr. Breaugh: But essentially a person who was in some sense defrauded--he bought something and when he got there it was not there--would have a right to make a claim.

Mr. Lehner: That is the purpose of the fund.

Mr. Breaugh: They would at least take a look at it.

Mr. Watson: Suppose you were going on a cruise and you got down there to take off on the cruise and the boat was full. You cannot go down the road for the night. You miss the thing and you had a week's holiday planned.

Mr. Lehner: Mr. Caven might want to comment on that.

Mr. Caven: I think in that scenario the client would have a valid claim to present to the board of trustees, because he did not receive the services at all.

In the first scenario he probably has received services, and the fund does not cover alternatives. In other words, where the client accepts an alternative service, he has received a service, although it may not have been of the quality or value he contracted for.

I am not saying he does not have other rights through the courts, etc., but through the fund, he does not.

Mr. Breaugh: What I am trying to get at is that there is a little vagueness around the edges here.

The consumer in Ontario probably thinks there is a big insurance fund at work here now and he is guaranteed if he buys a package off somebody who has this licence that when he goes there, this is the hotel he will stay at and this will be the quality of service he gets.

It is not really true that guarantee is in place. If somebody attempts to substitute, from the industry's point of view, if a reasonable attempt is made to look after this person, that is it. I am trying to get at what is guaranteed here. That is essentially the idea.

Mr. Lehner: That is right.

Mr. Rotenberg: On the point Mr. Watson made, where the service was not delivered, you say the fund would pay. Would the tour operator not have to repay it? Or if the fund paid it, would they go back after the tour operator if he were still solvent?

Mr. Caven: The consumer would be covered under the fund. The fund then would be subrogated to the rights of the consumer and would go back against either the travel agent or the supplier.

Mr. Rotenberg: On the point Mr. Breaugh made, there was a case recently where someone went to one of the islands--I cannot remember which one--and when that person got there, the hotel was not even completed and there was no substitute accommodation, nothing even in the same range. In that case, would there be a claim? You could not go down the road for two nights to a three-star hotel instead of a five-star hotel. There was no accommodation at all and you had to fend for yourself in some way.

Mr. Caven: He would very likely have a claim in that case because he did not receive a service or an alternative service. He paid for a travel service he did not receive.

Mr. Rotenberg: Then you are getting into a grey area. You contract for a travel service with accommodation; when you get there, it is supposed to be a luxury hotel and they put you in some little rooming house, or some dump, which is nowhere even close, but it is alternative. Is there a point where you can still put in a claim because you got an alternative that was not reasonably comparable? Is that a grey area, or is it a judgement call?

Mr. Caven: No. It is spelled out in the regulations that if the client accepts the alternative at that time, he waives his right to a claim under the fund.

2:30 p.m.

Mr. Rotenberg: If I can extend this, Mr. Caven, you go to this island--

Mr. Cureatz: And your wife is with you. It is two o'clock in the morning and she is as mad as hell. The tour agent says: "There is no problem. There is a little tourist home downtown." It is Santo Domingo or wherever you are. What are you going to do? Do not tell me you are going to go back home and hire a lawyer, because by the time you go that route it is going to cost you a couple of grand to get back your \$1,500.

Mr. Breaugh: Are you saying the moment you accept the alternative accommodation you have waived your rights?

Mr. Caven: You have waived your rights under the fund. I am not saying you have waived your rights under law.

Mr. Rotenberg: In that scenario, if you went to that place and they said to go to this little rooming house or shack, and you say, "Hell, I am not going there," and you go to another hotel and pay for it yourself, are you entitled to compensation for the alternative accommodation you paid for or that you did not get because there was nothing acceptable to you?

Mr. Caven: You would have grounds to file a claim with the board. Then it would become the decision of the board whether it felt you were offered alternatives you refused to accept. You would be in still another grey area. It would then become a decision of the board as to whether it was proper--

Mr. Rotenberg: This is really the nub of the problem. In your regulation about alternatives, are there the words "reasonably comparable" or any words such as that? An alternative could be a five-star hotel or a dinky little room in some dirty old rooming house, but is it an alternative? Let me put it another way: Do you have any case law or experience in your fund as to what you would or would not deem to be alternative?

Mr. Caven: There has been no case law through the compensation fund. There is certainly case law before the courts. You still would have all your normal grounds of suit or going to small claims court, and there are all kinds of precedents today in the courts.

Mr. Rotenberg: I have a final question and I will give it back to you.

Mr. Breaugh: It is a good thing I am asking only two questions.

Mr. Rotenberg: You had your two.

Mr. Breaugh: I get one in and you ask nine.

Mr. Watson: You have had your two and he has had his final one. It is going to be a short afternoon.

Mr. Rotenberg: Do you feel there should be some clarification of the regulations to define what alternative accommodation is?

Mr. Caven: It would be hard to define by legislation. When you get to matters of quality and/or alternatives by legislation, you have extreme difficulty defining it without getting into very grey areas.

Mr. Rotenberg: Should the fund have the opportunity, which it now does not have, of allowing a claim where the alternative accommodation was nowhere near up to par? In the present law, you do not have that option. Should we give the fund managers the discretion of an undefined, not-so-good alternative accommodation?

Mr. Caven: They would have to review the individual case. I cannot remember, in 10 years, that it has ever come up.

Mr. Rotenberg: But now they cannot; they are precluded from it.

Mr. Caven: The exact wording of that section is: "A client who has made payments for services...is not entitled to claim for a refund of any money paid by him where the client has been provided with travel services or alternate travel services and such claim is based on the cost, value or quality of the travel services provided."

Alternatives can get into quality and I do not think you will ever be able to define "quality" by legislation. The courts have difficulty with that at all times. The category of a first-class hotel in country A may not be first-class in B and C and so forth. That is a real toughie to define.

Mr. Cureatz: What about waiving your rights?

Mr. Breaugh: The difficulty I have with this process is not really that somebody is making judgements about whether it was a good hotel or a bad hotel. I believe the public perception is that if I buy a package for \$2,500 for an all-inclusive vacation, that is what I am going to get and I have an insurance fund back home in Ontario that will protect me.

I am not sure many of us are aware that if we buy from a

nice brochure, get there and it is a flea-bag hotel--out of expediency I have gone all the way to Jamaica or the Dominican Republic or wherever, and this is my two weeks for the year--it is not very practical for me to say, "I am not going to accept your alternative accommodation because it is not up to snuff." I have spent my load. I do not have cash to go out and look around for another hotel in a new town.

My only alternative really is to accept whatever is offered me, and the moment I do that I have waived my right to get my case in front of you. That is my problem. Do you get very many complaints about this?

Mr. Caven: From practical experience in 10 years--and there have been some problems in the 10 years in many countries--the number of requests for claims on the fund on that basis have practically been nil. Even in current ones, where there have been some immediate recent problems, we are getting complaints but not necessarily claims.

Mr. Breagh: Is that because there have not been difficulties, or because people are not aware?

Mr. Caven: No, we get complaints.

Mr. Breagh: How many complaints would you get in a year?

Mr. Caven: I cannot answer that due to the fact that I see only a small percentage of them. We have another section of the ministry that handles the complaints and I do not have figures readily available.

Mr. Breagh: Would it be possible in the next couple of weeks to give us sets of numbers about complaints that are received and how they are handled?

Mr. Caven: Sure, no problem at all. They are available. I just do not know them offhand. In our own section, we will take a complaint, particularly if it is an immediate complaint--most complaint handling is done by correspondence or by having the person come in, but if you are leaving tomorrow or the next day, it is not very practical to put it in writing--and we will become involved because it has to be done by telephone, so it is a fast thing that has to be handled in a hurry.

Mr. Rotenberg: Could I clarify something? You said there have been no claims for this kind of a thing.

Mr. Caven: Not claims, no.

Mr. Rotenberg: If someone complained and was told he or she could not claim on this thing, obviously there are no claims because they are told they cannot claim. Have there been complaints? Have people said, "Yes, I would like to get money back from the fund," and you say, "You cannot do it, because it is not in the law"? Is that why you have had no claims?

Mr. Caven: No, the people who are complaining are not

referring to the fund at all. As a rule, they are asking for their rights through the court or asking what efforts can we put against the wholesaler who caused the problems, if he was the culprit behind it. They are asking what pressure can we put on the wholesaler to make an adjustment and get a refund from the wholesaler or the travel agent.

Mr. Rotenberg: With respect, say I went to Jamaica, paid for a first-class hotel and ended up in a flea-bag, and I came back and called you personally and said: "What can you do for me? You have a compensation fund. I had to pay for a five-star hotel and got a flea-bag." You will say: "I am sorry. The fund does not pay those things." Therefore, I do not make a claim, but I have made a complaint. Mr. Breagh is asking how many complaints of this type have you had, and how many claims might you have had if the rules were slightly different?

Mr. Breagh: That is why I think those numbers would be interesting.

Mr. Caven: That would be hard to--

Mr. Rotenberg: Could you give us the number of complaints about that specific type of thing?

Mr. Caven: No, I cannot break down the type of complaint. We can tell you how many complaints have come in under travel, but that could be any of numerous categories.

Mr. Breagh: I would be interested in seeing, first of all, what kind of records are kept about the nature of the complaints. I am not that concerned with the breakdown of how many you were able to handle or anything like that. I just would like to see how active it is, and see how you follow it up.

Could you also give us--it does not have to be today--any kind of follow-up that you do on that? I would like to get some kind of concept on how actively and frequently the public uses this particular mechanism to rectify it. I would guess that a lot of people, rather than turn to you if they had an unhappy experience, would take it out on their travel agent and maybe book with a different agent.

Mr. Lehner: Perhaps another side of this story should be brought up. You mentioned being deterred by information from the branch. I do not think people are deterred from making complaints because sometimes questions are raised with the registrar which clearly do not fall under the possibility of compensation. They still make a claim because they just try it on for size. So it cuts both ways really.

Mr. Breagh: Yes, I would like to see just how well the machinery is working here to deal with that.

Mr. Rotenberg: Do you have people coming in asking to make a claim because of alternative accommodation that was totally different in style or luxury from what they paid for?

2:40 p.m.

Mr. Lehner: No, we are talking about the same claims Mr. Caven and--

Mr. Rotenberg: He said he has had no claims, but you have had nobody actually come to you and say, "I want to make a claim because I booked one class and got a much lower one"?

Mr. Lehner: Not that I recall. I have been on the fund for quite a while.

Mr. Breaugh: There are a couple of other areas I would like to pursue. The theory is that everybody who offers travel plans for sale is licensed and a participant in this fund. That is not quite true, is it? They are supposed to be, but not all are. Do we have any idea how large the kind of outlaw industry is?

Mr. Lehner: If they are not licensed, they are breaking the law, and whenever anything of that nature is found out or observed, it is followed up by the department and stopped.

Mr. Breaugh: Do we have any concept of how big that is? Is it just the odd person?

Mr. Lehner: I think it would be, because it is just like asking how many bootleggers or bookmakers there are. If something is against the law it happens all the time, but who is to say?

Mr. Breaugh: We do not have any real concept of how active or frequent it is?

Mr. Lehner: I do not think there is a very active population that way because it is quite well supervised by the registrar. The travel industry has many eyes and ears and anything that comes to light is reported and followed up.

Mr. Breaugh: Is the safeguard essentially that, no matter who sells you the ticket, most of it comes in and out of a pretty legitimate business source? Everybody has aunts, uncles, brothers and sisters who are now agents of some kind, but they all work for a limited number of companies.

Mr. Lehner: Yes.

Mr. Breaugh: What is it, 2,400 to 2,600 companies?

Mr. Lehner: Yes.

Mr. Breaugh: It all kind of flows in and out of those vehicles.

Mr. Lehner: Certainly.

Mr. Rotenberg: Is each salesperson in an agency licensed, or just the agency?

Mr. Lehner: The agency as such.

Mr. Rotenberg: There could be all kinds of salespersons working for a travel agency.

Mr. Lehner: That is right.

Mr. Rotenberg: I imagine your other control is that no airline would issue a ticket to a travel agency that was not licensed, would it? That would cut off most of the possible illegal activity.

Mr. Lehner: The travel agents issue the tickets after they have been appointed by the airlines, so it is really the responsibility of the airline to make sure who they appoint as their agent.

Mr. Rotenberg: To get an appointment from an airline, would you not need to have some proof that you are licensed? I cannot see any airline giving someone a stock of tickets without it.

Mr. Lehner: Nowadays you have to be. It is part of the licensing or franchising procedure.

Mr. Rotenberg: So the unlicensed are going to be people who are sort of on the fringe or working for a travel agency, but not exactly; who might be holding themselves out as working for a wholesaler.

Mr. Lehner: I think travel agents have become very aware of this now and they do not want to lose their licence and livelihood, so it is not worth it.

Mr. Breaugh: How great a problem is the practice of overbooking? Hotels do it a great deal now in vacation areas, and airlines do it. In frequent flights from here to Ottawa, for example, I know lots of people go and book passage back on every flight in an afternoon, so if their meeting is over at one o'clock you can catch the next one. Is it time something was done that made a slightly different kind of arrangement? Is that becoming a problem?

Mr. Lehner: I think the airlines have found if they do not overbook they go out with many empty seats.

Mr. Breaugh: Yes.

Mr. Lehner: They still do. Through their computer facilities, I think they have cut it down to a pretty fine point in estimating how many no-shows there will be and to what degree they can overbook. They know on this flight they can overbook exactly five, on another seven, whatever. I do not know whether all airlines in the United States pay compensation for bumping people, but there is some being paid. However, it is a difficult problem. It is understandable on the part of the airline because if they did not overbook they would lose a lot of money through the lack of their customers' consideration.

Mr. Breaugh: Yes, but it is one area in which it almost

seems to me the public is taking advantage of our practice of not penalizing people for just not showing up for a flight.

Mr. Lehner: I think perhaps it would be a good idea to do that, because it puts other people in a difficult position, those who may have to go on a certain flight and do not get the space because inconsiderate people take up all the seats without any intention of showing up.

Mr. Breaugh: Most of the people I have talked to in the industry are fairly well satisfied with what you have just said. The practices are established now and with computers you can pretty well guesstimate how many people will be no-shows for a given flight, and if you overbook by 10 or 15 per cent, you know that is what the average will be. If one or two people are inconvenienced, you pay them a few bucks, buy them a drink in the lounge and they are happy.

Mr. Lehner: I have seen that in Chicago, for instance, where American Airlines said, "We need a volunteer to leave this flight and continue to Los Angeles on the next flight." Most times they find a volunteer. If they do not find one, they bump someone and pay him twice as much, or whatever the modus operandi is.

Of course, with hotels it is a little more difficult. If you get to a place in the middle of the night and there is no place to sleep, that is a more awkward situation. It seems to be sporadic.

There was a time when this was the case in Mexico, about two or three years ago. It was really bad. I think it was at the time when the Mexican currency became so advantageous to the North American traveller that everybody was flocking to Mexico. Consequently, the facilities were overtaxed and the hotels just tried to grab whatever they could, and a little more if possible, and people became stranded.

There was quite a bit of press the other day about Santo Domingo and the Dominican Republic. That happened, on their own admission, because of the hoteliers there. They said, "Things have not been so good lately and things have been turning better now, but if we do not overbook, we are sitting with empty rooms."

Although they have recognized the situation, they still may not want to abandon it, so there is really nothing much one can do about it.

Mr. Breaugh: I recall an experience in the Bahamas. When we arrived, they announced that the air-conditioning had just gone out and that the engineers would be in from Florida the next day. They had apparently been making this announcement for about three years. They never did get the air-conditioning fixed. But, like for most of us, it was a once-in-a-lifetime experience. We had a great time otherwise. So what, if the air conditioning did not work in the hotel you opened the door.

Mr. Lehner: Sometimes things get even more drastic. I had clients in my office a little while ago, a couple who come from Europe every year and book with us for a southern

destination. In good faith, we booked them to St. Lucia, and they came back--they were very nice quiet people, they do not raise much of a fuss--and in a very quiet way they told us they were moved four times in two weeks within the same hotel.

On the second last move, the room they moved out of was occupied later on by another lady who was robbed at knifepoint in the same room. These things happen.

Mr. Rotenberg: I have a question on this overbooking.

Mr. Breaugh: I knew you would.

Mr. Rotenberg: American airlines pay compensation, but I do not think Canadian airlines do. If you are booked to Vancouver, you get bumped because they are overbooked, you miss a business meeting and so on, can you come to the fund for compensation?

Mr. Lehner: Positively not.

Mr. Rotenberg: If they gave you an alternative booking for the next morning or something like that.

Mr. Lehner: That has nothing to do with the fund.

Mr. Rotenberg: I see. But they did not give you the travel service you paid for.

Mr. Lehner: They will provide it the next day. They might give you some other compensation to sweeten the pill, but this would not be a compensation fund matter.

Mr. Breaugh: A lot of what the trustees do, in fact, the structure of the board is set out in regulation as opposed to being set out in law. Do you have any difficulty with any of that; that what you do and how the board of trustees is structured itself is done by regulation? That is, if the minister thought tomorrow that this was not working out very well, he could change that. Does that cause any problems for you?

Mr. Lehner: For the members of the board?

Mr. Breaugh: Yes.

Mr. Lehner: No, because the regulations are spelled out quite clearly, so there is not much ambiguity there. If, as has happened in the past, there are cases where it seemed it would be a good idea to change the act, the act was changed to accommodate a situation that was recognized at a time after the act had been passed.

I guess this is really universal with all legislation. All of a sudden, you realize something should have been different.

Mr. Breaugh: I take it the industry itself is fairly well satisfied that from the public's point of view they feel there is some kind of insurance thing at work here, and from the industry's point of view it is there, but it is not so onerous

that it is going to cause you a problem.

You have no concerns that the minister is going to sit down tomorrow morning and write another regulation that changes the structure of the board, or change what is compensable or how much they can get? You have no real concerns about that?

2:50 p.m.

Mr. Lehner: The travel industry has no fear of that because it would be very unlikely. If history serves as a precedent, the ministry was always very good about consulting with the travel industry, feeling the pulse to see what the general situation is in the opinion of the industry. There is good co-operation and, thank the Lord, a very good relationship between the ministry and the board and the trustees. It is not an adversarial relationship at all.

Mr. Breaugh: You feel there is a good balance between the public being represented on the board and the industry, and the ministry generally keeping its nose out of everybody's way.

Mr. Lehner: Sure. On the board there are three representatives from the industry: one is a representative for retailers--I am that representative--there is a representative for the wholesalers and another member represents airlines. Then there are three members representing the public sector and one person representing the government. It is a very good balance, very harmonious.

Mr. Breaugh: Is there much of a problem with people from out of province, or agents from out of province, participating? It occurs to me that somebody in Saskatoon could buy a vacation somewhere in the world, and as long as he did it through an agent who is part of the plan in Ontario, he would be covered. Is that very much a part of the business?

Mr. Lehner: That is not much of a problem because people from Saskatchewan do not usually book their trips in Ontario. If it happened, they would be covered.

Mr. Breaugh: There is no national plan under way, as I understand it.

Mr. Lehner: No. It is a provincial act.

Mr. Breaugh: Why is there not some national protection, or at least protection in each of the provinces similar to what is offered in Ontario?

Mr. Lehner: Probably because Ontario is the most progressive province. Who knows?

Mr. Breaugh: That is true.

Mr. Rotenberg: On that point, many of the wholesalers are based in Ontario and you might get an out-of-province travel agent booking through a wholesaler in Ontario who has a very good

package to the Caribbean or somewhere else. You would get indirect bookings through Ontario wholesalers from travel agents in other provinces, and they would be covered by the fund, would they not?

Mr. Lehner: No.

Mr. Breaugh: They would have to buy from a licensed agent.

Mr. Rotenberg: But wholesalers are also licensed.

Mr. Lehner: They would have to buy from a retailer.

Mr. Rotenberg: Does the fund not cover a wholesaler who does something wrong and goes bankrupt?

Mr. Lehner: If it happens in Ontario.

Mr. Rotenberg: I see. If the Ontario-based wholesaler goes bankrupt, we do not protect the person who booked through an agent in another province through that Ontario wholesaler?

Mr. Lehner: No.

Mr. Rotenberg: If they booked directly from another province, they would be covered.

Mr. Lehner: Yes.

Mr. Breaugh: Could I ask about the fund itself? What shape is it in?

Mr. Lehner: At the moment it is in very good shape. It was not in such good shape after Sunlight went down. That was a major calamity in many ways.

The fund is organized and structured in such a way that travel agents and wholesalers have to pay into the fund up to a certain plateau. Once that plateau of \$3 million has been reached, then the travel agents and the wholesalers do not have to contribute any more. There have been no major events recently. There was one, but we were able to recover. The fund is in pretty good shape.

Mr. Breaugh: What is it at now?

Mr. Simpson: Around \$2.8 million or \$2.9 million.

Mr. Breaugh: Near the upper end. Are any concerns being raised that there should be some adjustment in the number? Two million dollars is a lot of money, in my view. At current market rates, it is conceivable that if a major wholesaler went under--

Mr. Lehner: It used to be lower. It used to be \$1.5 million. It was raised to \$3 million because it had been shown that if a major event occurred, as you say, \$1.5 million might not be enough.

Mr. Breagh: You are fairly content that the fund now is large enough for you to handle just about any catastrophe, unless there were a major collapse in the industry?

Mr. Lehner: Not only that, but there is always the possibility--and it has been done in the past--that if there is not enough money in the fund and an assessment is being made, the next payment under the terms of the compensation fund is increased by some factor, whatever is necessary at that time, and the fund is replenished. It is the travel agents who pay into it.

Mr. Breagh: Is there any need to look at the maximum payment made to a consumer?

Mr. Mancini: Could I have a supplementary?

Mr. Breagh: You might as well. Everybody else has.

Mr. Mancini: What is the interest per year that you get on that kind of money? Do you have it in a current account?

Mr. Lehner: We have found it is in very good hands with National Victoria and Grey Trust. It depends on the circumstances. At present, it is between 10 per cent and 13 per cent. It is in treasury bills and different things.

Mr. Mancini: You would make enough money just from the interest on a monthly basis to cover a lot of the fees.

Mr. Lehner: We do. That is quite true.

Mr. Mancini: That fund has a good chance of growing by a significant amount even without increasing fees.

Mr. Chairman: Mr. Mancini, could you please sit closer to the microphone? Hansard is having trouble picking up your voice.

Mr. Breagh: They cannot pick up your golden tones.

At the other-end of the scale, is there any need to adjust the maximum that is paid out to an individual consumer? Is it \$3,500 now? Is there any indication that should be altered?

Mr. Caven: We have never had a claim in the 10 years that exceeded \$3,500. Using that as factual, I suppose if we suddenly had a rash of claims that exceeded it, it should be reviewed. That is \$3,500 per person.

Mr. Breagh: There are not many trips that would be in excess of that.

Mr. Caven: No.

Mr. Breagh: That is still true today.

Mr. Caven: That is right.

Mr. Breagh: Could you give us some idea of the average

claim that would be honoured by the board? What would be a typical kind of thing someone would get an award for?

Mr. Caven: It would be \$800 to \$1,000.

Mr. Lehner: It ranges all the way from a deposit of \$50 or \$100 to perhaps \$1,500 or \$2,000. Have you ever determined the average?

Mr. Caven: No. I think it is probably around \$800.

Mr. Lehner: If it is that much.

Mr. Caven: That is if you were taking an average.

Mr. Breaugh: Do we have an idea how many claims would be paid in an average year?

Mr. Caven: Yes. Last year there were 1,572.

Mr. Breaugh: So there were 1,500 or 1,600 people who put in claims and had them honoured for about--

Mr. Caven: That is the calendar year 1984.

Mr. Breaugh: Do you get any complaints from the industry itself about the fund? My impression is that most people working in the industry are fairly well satisfied with it. It has supplied the public with some feeling of security. It is not a great inconvenience for those working in the industry.

Mr. Lehner: No. The fees to be paid by agents into the fund are not so exorbitant that it would make a great deal of difference, and it is good protection. It is good for public relations purposes to make the consumer feel secure when dealing with agents. It has worked quite well.

Mr. Charlton: Could we go back to the services thing and the things that are covered by the fund? I want to refer to an issue I raised the other day when we were being briefed.

Let us say you have a situation where somebody has bought a package tour. He has a departure date, a return date and either the tour operator goes under and there is a collapse, or there is some kind of screw-up with the airlines or whatever. That person does not get home on the day he is supposed to arrive. He is two or three days late and there is a loss of wages. Does the fund cover something such as that when the contracted date of return is not met?

3 p.m.

Mr. Lehner: There are different aspects to your question. Suppose you take a situation where a client books a flight--I have to branch out a little. If you go to the Caribbean, there are two ways of doing it. You can go on a package tour where you travel on a set date on a certain aircraft that does nothing but transport you and your fellow travellers to a certain place,

and you come back the same way. You have a designated hotel that the wholesaler reserves for everybody.

There is another situation where you travel under what is called a foreign independent travel arrangement. The travel agent makes an airline reservation for you at a certain rate, which is sometimes less expensive than the regular rate because you fall within certain categories of booking in advance and staying a certain length of time, etc. Then, from a catalogue of possibilities, he reserves a hotel for you at the other end--in Bermuda, in the Caribbean--where you might be the only one on the aircraft who is staying there.

Suppose something goes wrong on your flight, being an FIT passenger having stayed at the Colony Club in Barbados. You were supposed to come back on BWIA and then for mechanical reasons you cannot get back for two days. It happens. This is not something the compensation fund would be concerned with, because this is something that is an airline matter. There might be mechanical reasons or there might be security reasons, etc. So this category would not fall under the compensation fund.

If you have a case where you have a plane full of people going some place and not coming back, then I think this could be subdivided into several categories. If it is clearly the fault of the operator by virtue of the fact that he went bankrupt, then the people would be transported home under the auspices of the Travel Industry Act, if the necessity arose.

Again, if it is just the mechanical failure of the aircraft, or weather conditions, or something such as that, of course it would not come under the act, because that is just one of the things that sometimes happens to travellers these days.

Whatever comes before the compensation fund is very well defined. In your examples, the only time I could think of when it comes before the fund is if there was a bankruptcy or the inability to perform of the wholesaler.

Mr. Charlton: Okay. Let us stick to that example. You have accepted the claim for the services that were a part of the contract--the tour, the hotel services, the flight home, whatever the case happens to be and whatever was affected by the bankruptcy of the company. Is there coverage for something that is not a part of the contract; that is, because the person was late getting home, he lost wages, or something?

Mr. Lehner: No.

Mr. Charlton: There is no coverage for something like that?

Mr. Lehner: No. Absolutely none.

Mr. Charlton: Have you looked at those kinds of possibilities?

Mr. Lehner: I think that would be a rather difficult

thing to look at, because then this would come under an insurance situation really. You might want to take out insurance for that purpose from whomever wants to sell you insurance for that type of thing. But if the fund started getting into these things, it would be a can of worms--just too big.

Mr. Rotenberg: But you could sue your airline wholesaler, who is still in business.

Mr. Lehner: That is a different matter. What I am saying is, of course, notwithstanding the possibility of taking private legal action.

Mr. Watson: With respect to the legislation that you have, you seem to be reasonably satisfied with it, inasmuch as adjustments have been made with the limits and that sort of thing. Is there anything from the fund point of view that you would like to see changed?

Mr. Lehner: I do not think I could see anything at the moment, because the act is really a living organism. If it needs to be changed, it is being changed, as it has been done in the past. We try to keep it up to date with conditions as they prevail, or the regulations; so at the moment, I cannot see anything that--

Mr. Watson: You have not had an occasion when you felt inhibited to be able to do something because you felt sorry for somebody who might come before you and you had to say, "I would like to help you but under the act we are precluded from doing that"?

Mr. Lehner: There are always cases where somebody might say he would like to have this and that, and you might say, "I am sorry; I cannot do it." But some of these requests just do not fall under the act. They should not even be made in the first place.

It is not only my feeling that the fund works quite well. I am only one person. The representatives of the travel industry and the various associations seem to be quite satisfied with the way things are going.

Mr. Watson: Let us take last year's claims as an example. You use the figure of some 1,500 claims. Can you give me the categories of those claims? How many would have been because of a bankruptcy?

Mr. Lehner: Probably most of them, were they not?

Mr. Caven: Yes.

Mr. Lehner: I think the vast majority.

Mr. Caven: I would say 99 per cent.

Mr. Watson: So the time that was spent on some of these services would be very rare. I was going to deal with the one per

cent. What action would your fund take against the member? Would there be a specific assessment because you judged that the fund should cover and the fellow was not bankrupt? Do you go back to your member agency to collect? Do you have any powers to collect? Do you have power to say, "If you cannot pay up, we will cancel your licence"?

Mr. Caven: I think that is pretty well covered in the regulations under the claims section; that is, subsection 15(1). The travel agent can only refuse when he has legal justification. If he has no legal justification to refuse to adjust or refund, or whatever the case may be, then the fund will protect the consumer.

Under the subrogation rights, we will go back and collect from the travel agent. In 10 years, I have one pending now. I think that is the first time we have actually had to go back to try to collect from a travel agent who refused to reimburse his client.

Mr. Watson: If that is all that is involved, it is not worth dealing with.

Mr. Caven: It is a real rarity.

Mr. Watson: What powers do you have? We have the fund on one hand and we have the minister on the other. For clarification, who gives the agent his licence? Is it the ministry?

Mr. Caven: Yes.

Mr. Watson: Is that the director?

Mr. Caven: No. I do. The registrar does.

Mr. Watson: The registrar gives the licence.

Mr. Caven: I would have to propose to revoke his registration.

Mr. Watson: If the fund said it will pay and the whole industry should not have been responsible, but rather this one individual, what power do you have to revoke that licence? Can you hold that over an agent's head and say, "You pay up or else"?

Mr. Caven: Yes. Naturally, we would review it with our legal section to make sure we are on good, firm ground. If it is confirmed that we have a legal claim back against the registrant or the participant, we would give him his option, "Please settle or else." If he does not settle, he leaves me no choice but to suspend him--I also have the power to suspend--and propose to revoke his registration at the same time.

Mr. Rotenberg: What is his recourse to an appeal procedure from that ruling of yours?

Mr. Caven: It is through the Commercial Registration Appeal Tribunal. He has 15 days to appeal the decision after he receives it.

Mr. Watson: How much of a watchdog function do you have?

Mr. Caven: Considerable.

Mr. Watson: Do you suspend licences never, often or seldom?

Mr. Caven: We certainly suspend them. I suppose it depends on your definition of frequent. Often just the threat, shall we say, or the advice that unless they adhere to the act and regulations, it will result in a suspension, brings them to terms in a hurry. If it does not, we will be very happy to oblige by suspending them and proposing to revoke.

Mr. Watson: I suppose from your point of view it is a financial responsibility.

Mr. Caven: Finance plays a large part in our monitoring.

3:10 p.m.

Mr. Watson: How do you determine when an agency has financial accountability? Do they renew every year? Do they send in financial statements?

Mr. Caven: We have a team of auditors financed by the compensation fund that is continually monitoring financially all registrants it requires financial statements. We have the agencies that are in good order file their year-end financial statements probably once a year. If there are grounds, of course we will be in to see them quite frequently.

All new registrants are visited in their third month of operation, again in their sixth month and again at their first year-end. From there, it depends how the first year goes. It is a continual financial monitoring of the registrants.

Mr. Watson: Are those people employees of the fund or employees of the ministry?

Mr. Caven: They are employees of the fund. They are on contract to the compensation fund and the fund pays it.

Mr. Watson: Are they full-time or do you contract with certain auditing firms?

Mr. Caven: It is contracted out. It is a contract outside of government, but it is full-time.

Mr. Watson: Is it by firm or by individuals? Do you contract with Thorne Riddell--

Mr. Caven: We contract with a firm.

Mr. Watson: It is not contracting with individuals.

Mr. Caven: No. It is a firm of chartered accountants. They have been doing it for about four years.

Mr. Watson: How successful is that in protecting the fund?

Mr. Caven: It has been very successful; otherwise, you would not have the industry backing the cost of it. They are the ones who have to recommend to the board of trustees. It does not mean the board has to agree with them, but they make a recommendation to the board of trustees that it put these people on contract. It is usually recommended at least once a year, at the end of each contract year. The industry would not spend that kind of money, which is their money, unless they were satisfied with it.

You will never prevent financial failures, but you can cut them off at the pass. In other words, you find out when they are only \$10,000 or \$15,000 in the hole rather than stumble on it when they are \$50,000, \$60,000 or \$75,000 in the hole. It is far better protection and you can move much more quickly with the resources behind you. If there is a disaster, you can have qualified CAs there in an hour if necessary to assist in the wind-down of a bankruptcy or a cease to operate.

In travel, there often is no bankruptcy. That is one of the problems at the early stages. The clock is running and you must make some hard decisions very early in the first 24 hours. There are the people who are already out and the people who are leaving tomorrow. You have already frozen their assets, whatever they be. A lot of decisions have to be made in the first 24 hours. Having the services of a CA seven days a week, 24 hours a day is a big asset.

Mr. Watson: As registrar, you have the power to freeze assets and that kind of thing.

Mr. Caven: Yes.

Mr. Watson: As the compensation fund, when you are freezing the assets which hat are you wearing? Is it all the same hat or is it a different one?

Mr. Caven: No. I am always wearing the ministry hat. I am not a member of the board of trustees. I attend the meetings, but I am not a member of the board. I am the registrar or administrator of the act.

Mr. Simpson: Could I give a scenario that might join the two together?

Mr. Watson: Yes. I would like to know where the director and registrar fit in.

Mr. Simpson: If you have what looks like a major failure, a lot of considerations come together all at once. I suppose this is where I have helped to play a role. Let us ignore a situation where we have to retrieve passengers from a far-off destination. We have a failure. Typically what happens--and this is something that has not been brought out--is that this fund is not so much a financial insurance fund as a trip assurance fund.

The concept was that if you lose your money, we will give you back your money. The approach now is to see that people get to their destinations unaffected, as much as possible, because that is important. It is their holiday. In the event of a failure, as Mr. Caven says, the first 24 hours are vital. It goes something like this: Secure the property, literally. Secure the premises, get your hands on the records, get your hands on the booking sheets, get your hands on the employees in the agency. Secure the situation so you can find out what is happening.

As a trip assurance scheme, three elements come together. The registrar is sitting there with his knowledge of the state of affairs, because the accountants and inspectors have looked at the books and established that there is a problem. The travel industry compensation fund stands available to make the financial commitments to see people can proceed to their destinations.

In other words, it is up to the board of trustees to authorize payments to hotels and airlines. In other words, they may be asked at that stage to make financial commitments. Through another group, which is loosely called the emergency committee, the industry as a collective effort will send in a number of volunteers to literally man the phones and make the arrangements for these things to happen.

The registrar is there with his stock of knowledge of the situation and the tools he has. He will probably have frozen the bank accounts; he may have suspended the registration. The compensation fund is there and ready to be available to provide the financial commitments.

We have conference telephone calls. We get together. A subgroup of the board might get together. The industry people--the emergency committee--will come in, man the phones all night if necessary to reorganize trips, find alternatives and things like that. It all comes together at a time when there is a need for something to happen. It is a remarkable situation.

I am pretty objective. I stand back from it and watch this thing work. It is really quite remarkable. The consumers get their holiday. That is the great thing about it. The attempt is made to get them to their destination to exactly the same hotel as they wanted to go to, on the exact same plane they were going to take.

You talk about people not getting back. I have seen some remarkable situations over the years when we have had problems where airlines have come to the fore and offered seats. "Hey, I have 80 seats out of San Juan on Sunday. Do you need 80 seats? You have 80 seats." It is a remarkable industry from that point of view. That is how it works.

Mr. Rotenberg: Just a couple of follow-ups. You said before that you put pressure on agents or wholesalers when things do not happen. Amplify that. Is that in a situation where somebody came back and complained to you about lack of accommodation? What do you do when you say you put pressure on people to adjust?

3:20 p.m.

Mr. Caven: It would probably arrive on my desk as a complaint. You would contact the travel agent as a courtesy because it is likely that the problem is at the wholesaler end. Then you contact your wholesaler. If it is a major event and more than one or two complaints, you will have the wholesalers in and ask what is going to be done. In other words, you discuss the problem and what is going to be done for the people who had the problem.

One of the concerns I always have is that is fine and those things will happen, but what about this week's departure and next week's departure? I think a big part of our job is to iron out the future trips, not only the ones that went sour but also the ones down the road. We have to impress on them that they have business, legal and contractual commitments. They have obligations under the act and regulations. That is what I would call pressure. In other words, you are laying out the facts to them, the rules of the ball game, and they must adhere to them.

Mr. Rotenberg: Let us take the case you were talking about. You go down to whatever island it is and you go to a high-class hotel and you have the option to get accommodation in some sleazy rooming house. You come back and the fund will not pay for that. But you say, "I paid \$800 for myself and \$800 for my wife for a week at this hotel and I really got much less in the way of accomodation." Have you been successful in those cases in having the wholesaler refund some money to the clients?

Mr. Caven: We had a very recent case you probably read about. You read the first parts; you never read the good parts. The Cuban government closed a hotel in early January. It was certainly in the Toronto papers. They closed one of the hotels for sanitary and many other reasons. We were in touch with the wholesaler immediately. Alternatives were provided at once for the next group travelling and refund adjustments have been made to all the passengers who suffered when they went on the trip.

Mr. Rotenberg: What percentage of people who in your opinion have legitimate complaints do get some refund adjustment from the wholesaler? Just give me a rough idea. Is it a majority, some, a few or almost all?

Mr. Caven: I think it is probably as high as 90 per cent if they are legitimate complaints. You get the type who will complain--

Mr. Rotenberg: I understand.

On an entirely different topic, we talked about the fee to the fund. My understanding is that a number of years ago, when you first got into the travel agent business, every agent had to be bonded.

Mr. Caven: Correct.

Mr. Rotenberg: You have abandoned the bonding.

Mr. Caven: Yes.

Mr. Rotenberg: There are two aspects of this. The bonding company did its own investigation and gave you some assurance of the financial stability of the agency, or at least that is what a bond is supposed to say. You have replaced that with your own inspectors.

Is there a comparison from the agent's point of view between what he is paying into the fund and what he would have paid to the bonding company? I understand those bonds were pretty expensive when they were around.

Mr. Caven: Towards the end, the bonds were very expensive, because of the experiences the insurance companies were having. When they first got into the market, they had no way of knowing what to charge. There were no actuarial figures and the rates on the bonds continually increased. For most agents, the payment to the fund has been cheaper than what they were paying for the bonds at the end.

Mr. Rotenberg: That is the question I wanted to ask you.

Mr. Caven: That has not cost the average registrant any additional moneys at all.

Mr. Rotenberg: From your point of view the fund is much better than bonding, and from the agent's point of view it is much better. From the public's point of view it is obviously much better because you have a progressive, sympathetic government organization rather than a lousy insurance company looking after the claim.

Mr. Caven: The insurance did not cover it. That is the trouble.

Mr. Rotenberg: The bond covered a certain amount of that.

Mr. Caven: Peanuts, though. What does a \$5,000 bond do for you on a \$200,000 loss?

Mr. Rotenberg: Towards the end, though, you required a bond of much more than \$5,000.

Mr. Caven: The maximum was \$25,000.

Mr. Rotenberg: The maximum you required for so much business was \$25,000?

Mr. Caven: For example, Sunflight/Skylark cost the fund \$3 million. Their bonds were \$25,000 each.

Mr. Rotenberg: In total?

Mr. Caven: Yes; so the bonding with the fund did not make much sense. Insurance companies, with due respect, were not doing any investigation.

Mr. Rotenberg: I had the impression you had raised your bond limit considerably towards the end.

Mr. Caven: No. That was proposed. I met with the Insurance Bureau of Canada. The bottom line after meeting with them was that they would raise it to whatever we wanted, but we might have something like 15 agencies in Ontario who just would not write the bond.

Mr. Edighoffer: What is the annual cost of this to the fund?

Mr. Caven: Nothing.

Mr. Simpson: What does the fund expend on the inspections?

Mr. Caven: We are budgeted at \$150,000 per year.

Mr. Chairman: Mr. Lehner, you wanted to add something?

Mr. Lehner: I will just add a funny little sidelight on the question of bonding. As travel agents, we lost money on a bonding company because Pitts Insurance Co., from whom we bought the bond, went bankrupt. We had to buy another bond.

Mr. Chairman: Mr. Charlton, I think you had a question.

Mr. Charlton: No, it has been answered.

Mr. Chairman: Is that it, Mr. Rotenberg? Back to Mr. Watson.

Mr. Watson: Do you track down the people who want to make claims, or do they have to make claims to you? I am thinking in terms of a class action type of thing. Do people actually have to make the claim to you? I guess if you lost money you would. What I am saying is that if a company goes bankrupt, we assume that everybody who is on the trip is going to make a claim. Do they have to make the claim individually or do you contact them?

Mr. Caven: They have to do it individually. The normal process is that the bookings were made through their travel agents; so, of course, they go back to the travel agent. He is well aware of what they have to do, and either he has the claim forms right there or he will give us a call and we will send them out direct to the client or to him, whichever he wishes. But the claims have to be filed with us; we do not look for claimants.

Once a file is opened, we will pursue claimants for six months and 12 months sometimes because they do not submit the documentation we require.

Mr. Watson: Is there a time limit requirement?

Mr. Caven: They have to file within six months of the cease to trade. We feel that is a reasonable time. Again, the board of trustees does have the power in unusual circumstances to grant an extension on the six months. We feel the six months would be normal time for somebody to commence a filing. It does not have to reach the board within six months, but they have to start the

filing with us within six months of the failure of the registrant.

Mr. Simpson: We are pretty well satisfied that claimants get their refunds. We do not think people are lost in the shuffle in Ontario and fail to get their refunds. All kinds of people point them in the direction of the compensation fund, as Mr. Caven says.

The exemption power we have for the six months, because this is my pet clause, is really well designed. It is well understood by the board of trustees that if somebody somewhere, say some elderly person or disadvantaged person, did not happen to hear about the time limit and for some reason missed out in getting his claim in, he will be taken care of.

The six months is designed to put some discipline into the system, because if you are in a big situation, you want to pay out the money. If it were a very large situation, you have to have some discipline to get everybody going.

Mr. Lehner: Unlike the travel agent who forgot the application in her desk, which we do not consider because it is not a consideration for an extension if a travel agent forgets to send a claim in and has it in her desk. That is her problem.

Mr. Simpson: That would be the travel agent's claim, not the consumer's.

Mr. Lehner: Yes.

3:30 p.m.

Mr. Watson: The principle of this fund has been used as an example, particularly for some of the funds that have been set up very recently in agricultural products, the ones for meat and grain storage. I think we probably have dealt with as much as you can tell me, but the problems there are in this licensing procedure.

If you are going to turn a person down from getting a licence because you do not think he is financially viable, that is kind of dicey. How do you turn a person down? Do you have guidelines that say they must have so much equity? How do you do it?

Mr. Lehner: A person is not necessarily automatically turned down because it is not viable, but the record of a person or a company is examined. Pretty well anyone who applies is accepted as a registrant. Am I wrong in saying that?

Mr. Caven: No. At the start I think it would be very difficult to turn anyone down on a financial basis. If the person has a track record where we had put that person out four years ago for a criminal offence or something, and our little bells ring, I will certainly not let him back in. However, we are talking about financial matters. They would not be turned down on the initial application, but if they have been running for a year and we have done three financial inspections and their working capital deficit

is about \$30,000, I think we would have grounds to propose to revoke them unless they come up with additional capital.

You do not automatically revoke or suspend them. You have a meeting. You have request letters go out from the accountants. They have lots of warning ahead of time. Finally, we have a meeting with them and say: "You have to do something. You are running \$30,000 in the hole. A good percentage of that is probably consumers' money. You are living on your cash flow. Either you inject new capital or give us a voluntary termination and fold up your tent and get out now."

If he flatly refuses to fold up his tent or inject additional capital, I have no choice but to suspend and propose to revoke, based on financial considerations. We will go to the tribunal if he asks for a hearing and base the whole case on financial considerations.

Mr. Watson: It seems to me that people have a habit of going bankrupt at the right time, just after they have taken the order for a big tour. In the case of an agricultural product, it is just after they have had a truckload of cattle come in and before they have sent out the cheques. I guess travel people would not do that.

Mr. Caven: That is where you must have continual monitoring. You must have continual contact with your trade associations because I do not imagine that business is much different from travel; you pick up a lot of information on the street. A lot of it is rubbish, but if there is any smoke at all you should be looking into it.

By continual monitoring you can see the start of trouble with an agency. We have some that are filing financial statements with us every month. That gets rather expensive for an agent, but it is one of two things. They say they are going to be able to turn it around and perhaps they have shown a slight improvement, but we watch them very closely and, if it gets any worse at all, we have to pull the plug. They have to file a financial statement with us every 30 days. If they get a little better, we can move it to quarterly reporting, then to six months and so forth.

Mr. Watson: That activity has nothing to do with the fund.

Mr. Caven: No, it does not. It probably indirectly helps to protect the fund.

Mr. Watson: However, that kind of activity would not come to the trustees or the board.

Mr. Caven: They pay the bill and we do the work.

Mr. Watson: Do you have hearings about claims? I assume most of these claims are settled through the mail.

Mr. Caven: The claims may come to us by mail, but the actual claims have to be presented to the board of trustees and

the board meets every two months. The actual claims go before the board of trustees.

Mr. Watson: Who takes the claims to the board?

Mr. Caven: I do.

Mr. Watson: You have a group of claims and say, "These result from the bankruptcy of XYZ travel agency, and therefore we think they should be paid."

Mr. Caven: That is right. They meet the regulations and the requirements. They review them.

Mr. Watson: Does an individual claimant ever come before the board?

Mr. Caven: No. If the board turns down his claim, an individual does have the right of appeal to the Commercial Registration Appeal Tribunal. In other words, if the board turns down a claim, it has to give a written reason for the turndown and that claimant has the same rights as a registrant to appeal and go to the tribunal.

Mr. Watson: Has that ever happened?

Mr. Caven: Yes. For a while we averaged about 12 to 15 a year. Now we have so many precedents set that usually after they have appealed, if you draw previous precedents to the attention of their legal counsel, they often withdraw. Both consumers and trade people have gone to the tribunal.

Mr. Watson: So the appeal from your fund is to another tribunal, not to the minister?

Mr. Caven: No. It is to the Commercial Registration Appeal Tribunal.

Mr. Watson: That is a little different from most of the boards we deal with. They tend to be the end of the line, except for the minister.

Mr. Charlton: We have discussed that issue twice now, where individual consumers are making claims. There is one obvious exception to that, and that is the situation you described before, where the three parties come together to deal with a stranded group when a company collapses.

The group is already on holiday and the fund is making its financial commitment. You are seizing the premises and the emergency committee is coming in and making the arrangements, so funds have been expended from the fund without applications being made. When those people get back, do they have to sit down and make individual applications in that kind of case?

Mr. Caven: No. That is covered in the regulations, where the director and the board may act, where passengers are stranded, to alleviate their suffering, etc. We feel that is rather

important because, say in Jamaica, a hotel manager is very quick to pull the in-house passenger into his office and say: "That coupon you gave me when you arrived is worthless. You now owe me \$900 for your hotel room." We guarantee each of the hotels full payment and tell them to leave the passengers alone.

Interjection: A lot of passengers would not even know something was happening.

Mr. Caven: That is right. In many cases I do not think, until the passengers get home, they are even aware of the trouble, but the drums beat very quickly in the industry and the hotelier knows in a hurry. He knows within about 24 hours, and one of the things that has to be done in the first 24 hours is to get telexes and cables out to every single property where we know there are in-house people.

Mr. Chairman: Could I have one question? We have been all around it so you may have answered already. In the situation where Cuba closed a hotel and there were a couple of hundred people involved, you jumped in. It may or may not have been a compensation situation, but it was an emergency situation. You also have outlined where you police and pull the plug on various agencies.

Does the board get involved in the situation where there are complaints coming in about one agency continually overbooking, or people arriving and there being no hotels? You get a constant group of complaints and you say, "Sorry, you cannot go on." It is not a proper claim, but it is a complaint. Do you as registrar do anything about that, or does the board?

3:40 p.m.

Mr. Caven: I do as registrar. That has nothing to do--

Mr. Chairman: Do you go and have a talk with them?

Mr. Caven: With the board?

Mr. Chairman: No. Would you have a talk with that agency?

Mr. Caven: Yes. We would have a meeting.

Mr. Charlton: He does not go, he summons them.

Mr. Caven: Yes. You come to me.

Mr. Watson: I like that expression, "We will have a meeting now," but I bet I know whose office it will be in.

Mr. Caven: Unless I think you are going to run with the books. Then I will come to you.

Mr. Chairman: What happens if it is a normal size of agency and you have had six complaints over the past year about the same type of thing, that once people are there they are forced into alternative accommodations? Where are your teeth? What do you

say to them? Do you say: "We are unhappy with you. We are getting too many complaints"? What do you do then?

Mr. Caven: Again it would require a meeting with the registrant and it would depend. Is it just unfortunate that registrant has hit a bunch--

Mr. Rotenberg: Bad luck.

Mr. Caven: No, more than bad luck. Wholesalers get into difficulty. We have had a lot recently. I mentioned Cuba. That was Mickey Mouse compared to the Dominican Republic in the last two weeks, on which we pulled in all the wholesalers. That broke on a weekend. I had every Ontario wholesaler in our premises, in our offices, on the Monday to discuss the problem. There was nothing I could do about the number of people who were down there. I knew we would hear from them when they got back, but I also knew there were four planeloads going the next weekend and four the next and the next.

That is a big part of the job, to make sure this will not keep reoccurring. I would ask: "What are you going to be doing, Mr. Wholesaler? You have your contracts with the hotels. Somebody is at fault. Either it is the hotels that are at fault or you are at fault, or a little of both, etc. You cannot keep sending vacationers there knowing they will end up on the beach or in some squalid accommodations."

Mr. Mancini: Hugh O'Neil was there while all this was happening, and he said he spent the last two days of his vacation making calls all over the place.

Mr. Caven: The Globe and Mail quoted him. I have not heard from him.

Mr. Chairman: That is the situation when you can establish that a fellow has been unlucky; he happened to have come in contact with two or three bad wholesalers or he has had some bad luck. But after half a dozen complaints about places all over the world--one from Italy, another Greece, a couple from the Caribbean and from Mexico and so on--what do you do to them when you cannot lay it off on a wholesaler? What is your procedure?

Mr. Caven: First, you would have to ask what he did with the six, eight or 10 complaints. Did he resolve those satisfactorily with the clients, and was it done fairly speedily or was it dragged out? Did we have to come down on him six months later because he still had not given them any satisfactory answer?

Mr. Chairman: Presumably it is the latter, because you have all these complaints. If he dealt with them speedily, presumably the complaints would not have reached you.

Mr. Caven: Not necessarily. People will complain today and send me a copy at the same time and then call me in five days and ask if I have it resolved. They feel we are going to be able to resolve it immediately. That would be one factor.

If he continually had problems, we would have to review the seriousness of it. If we thought there was any misleading--more than just advice--advertising perhaps, misleading in his contracts with the public--

Mr. Rotenberg: Or just a poor businessman.

Mr. Caven: With a poor businessman, you are going to have trouble. If he is just making poor decisions, I would want to be able to find something more than just poor business decisions. Then we would have to do a proposal on him to revoke his registration.

Mr. Chairman: Does that involve the type of thing where they book you a flight down to X and another to Y, but then your return ticket is from X back home but there is no connecting link from Y back to X. When it is that kind of sloppiness, do you look into that kind of complaint?

Mr. Caven: We would look into it. Using that scenario, I would say to the agent that he should reimburse the client immediately for whatever he was out to get from X to Y. He should not drag it out and should give a full refund for whatever the person is claiming. The agent may say the client flew first class when he did not have to, and that it is tough luck, but I would say: "You reimburse him for whatever he was out. You goofed." That is the bottom line. I do not think he has any argument. If he has errors and omissions insurance, that is fine, but meanwhile he should settle quickly with the client.

Mr. Rotenberg: If that happened a number of times with the same agent, you would drag him in and say, "Clean up your act or else."

Mr. Caven: Yes. We would also start looking at other things. We would probably review the financial aspects again. Usually there is more than just one thing.

Mr. Rotenberg: I do not know whether you get into this or not, but some airlines and travel agents have certain sweetheart deals with airlines. The ticket is so much for the refund part of the commission, or the airlines pay extra commission and then refund it and so on. This does go on. Is it illegal as it is in my business, the insurance business, to refund commissions to a client?

Mr. Caven: It is illegal under the airline contract. It does not come under our act. It is under one of the resolution numbers of the International Air Transport Association contract. They are not permitted to do that.

Mr. Rotenberg: When that has allegedly happened or when an airline has a published rate but gives certain travel agents special deals or extra commissions, and that is passed on and some travel agents put through a deal to go to X where other travel agents cannot get you, that is none of your business.

Mr. Caven: Not as long a consumer does not get hurt.

Mr. Rotenberg: I see what you mean. Some consumers may get hurt because they cannot get the same deal, but that is not in your scope.

Mr. Caven: I cannot get into that end of it.

Mr. Mancini: I want to go over some of the questions already asked. I was not quite clear about the answers on the problem that happened in Cuba or the one in the Dominican Republic a couple of weeks ago. I am not clear what your role is after all is said and done. Would you please go over that again?

Mr. Caven: Ontario consumers are suffering. They have paid for a vacation they did not receive in full as per contract. What is the reason? In Cuba the hotel was closed.

Mr. Mancini: Was that done on the spur of the moment?

Mr. Caven: That is the story we are getting out of Cuba, Somebody claimed they went to the Cuban authorities about health reasons and it was closed very quickly. We will probably never get a full answer on that. It was closed and then cleaned up within about a week. It hit the press here on, say, a Monday or Tuesday. It was rather stale-dated at that point because the hotel had already reopened the previous Sunday.

The problems were for the previous week or 10 days. Our concern was, were they going to be using this property? What were they doing for the passengers? What were they doing for next week's flight that was going there? They had 180 passengers for that destination. If you have a hotel problem, you may have to switch it, whether it be Cuba or the Dominican Republic. We have oversales in the hotels in the Dominican Republic. Some of the hoteliers have admitted it. They have contracted for more rooms than there are in the hotel.

3:50 p.m.

Mr. Mancini: What did you do for those consumers when everything was over, when they got back and did not have their trip?

Mr. Caven: We did not have to do anything for the Cuban ones because the wholesaler is settling with every single one of them who had a complaint. Fortunately, he carries insurance. He is settling whatever the claims are, as long as they are within reason. If they get ridiculous, then he will have to argue with the insurance company, but he took a positive approach.

When the next group went down, they also sent somebody down from the Toronto office. They interviewed every single person who was at the resort that week and they even had some of them interviewed by the media on their return to say it was cleared up. That was their side of the story.

On the Dominican one we are still--

Mr. Mancini: What do you do then? Do you make a notation

on your files that ABC company was involved in this type of thing?

Mr. Caven: Sure. We keep a continual ongoing file on that tour operator. In other words, if I had a complaint from five or eight years ago regarding that operator, I would be able to tell you about it.

Mr. Mancini: When would you decide whether it was time to call in the operator to review the company's licence?

Mr. Caven: After we met with him, if the next week the same thing happens and the following week the same thing happens, then we would have him in very quickly. He is obviously ignoring everything, continuing to take people down there, knowing full well there are no accommodations for them. We would be forced to suspend him.

The suspension power is a big thing. There is an appeal on the suspension, but the suspension stays on for 15 days. If you suspend a tour operator for 15 days, he is almost out of business. That is quite an awesome power. We cannot throw it about, but it certainly catches their attention. They know they have to listen to what we are saying. That is what we were impressing on all of them in regard to the Dominican Republic situation. We did not want to see any more groups going out of here, then finding half of them had no hotel accommodations.

If they have to have alternatives, that is fine, but tell the passengers before they leave. Do not hand them a letter after they are already on the aircraft, saying: "Sorry, Mr. Brown, you thought you were going to Holiday Inn. You are now going to faraway shores somewhere else." You have to tell them in advance and tell them what the alternative is. If they do not wish to accept the alternative, you must give them a full refund.

Mr. Mancini: Just to change the tone of the questioning, how big is your office? How many employees look after this legislation?

Mr. Simpson: I can tackle that. It is not the easiest thing to answer because the division has 142 people.

Mr. Mancini: For the travel industry?

Mr. Simpson: No. In Mr. Caven's own office, if you count warm bodies, there are five. I am trying to remember if they are full-time or part-time. There are five people in Mr. Caven's office, but he is supported by legal counsel which serves everybody, central registration which serves everybody, the complaints office which serves everybody, the investigation branch and the field staff.

He draws his resources from all over the division. Without belabouring the point, whenever there is a problem, we draw on the compensation fund people and the industry volunteers. So it is not a finite figure. Whatever he needs, he gets. We have the outside auditors as well, the auditing firm that on the spur of the moment can throw five people into the breach.

Mr. Mancini: Do you have any outside contracts with other people to come in and help? Do you have a legal firm on a contractual basis or a consulting firm or anything like that on a contractual basis?

Mr. Caven: We do not. The board of trustees has its own legal counsel.

Mr. Mancini: Who would that be?

Mr. Lehner: We have the firm of Elkind and Lipton.

Mr. Mancini: Are they on retainer?

Mr. Lehner: They get paid for whatever they do on a fee basis.

Mr. Mancini: For services provided. How much in dollar amounts did they provide in services last year?

Mr. Lehner: I will have to ask the registrar how much in dollars, but one would have to put this against how much they brought in. Through the services of our legal counsel, not only do we sometimes saving considerable amounts of money, but we also recoup money that might go to a bank or other sources. By availing himself of all the resources there are of a legal nature and pursuing the cases on hand, he is able to bring back into the fund amounts of money we would not get otherwise.

We had a case recently where we were able to retrieve almost \$1 million. Maybe the registrar can enlarge on the exact circumstances. Whatever he gets, he certainly earns. I cannot give you an offhand figure. Maybe the registrar can.

Mr. Caven: The amount of use varies. Last year, because it was fairly heavy, it was probably about \$150,000 in legal fees.

Mr. Mancini: Does that go to the firm, or is there one particular lawyer from the firm attached?

Mr. Caven: It goes to the firm.

Mr. Mancini: How was the firm chosen?

Mr. Lehner: It was chosen at the ministry's level, if I remember correctly.

Mr. Mancini: The ministry said, "These are the people you are working with, thank you very much."

Mr. Lehner: I will let Mr. Simpson explain.

Mr. Simpson: The board started its work in 1975 when the act was proclaimed. The first significant legal issues came up in 1976-77. I asked around the office at that time. I said, "Who is a very rough and tough commercial litigation firm?" This firm was identified as a very aggressive commercial litigation firm. There are two partners in the firm and both were known to our people in

the office. Michael Lipton is our counsel. We asked Mr. Lipton if he would look at some stuff for the board of trustees. He did the work for the board and it has been satisfied.

Mr. Mancini: Over a period of years.

I cannot remember--I am going to ask our researcher--whether any information was given to us about the yearly expenditure for the compensation fund board of trustees or for the agency. Did you provide a yearly global figure for us, John?

Mr. Eichmanis: I do not recall anything offhand. Is there something in here? No, I think there were just the per diem rates for the members. All the other services, such as payments for the trustees, come out of the fund itself. Everybody who works for the fund is paid by the fund except for the members who get a per diem..

Mr. Mancini: If you spent \$150,000 last year for lawyer fees, how does that fit into your global budget in running this agency? What was the total budget?

Mr. Lehner: I do not think you can speak about a budget, because you do not know what is coming up. You have to deal with each case at the time.

Mr. Mancini: Can you give me a rough estimate for last year?

Mr. Lehner: We can only give this in retrospect and not in advance, as a budget.

Mr. Mancini: Certainly.

Mr. Simpson: About \$250,000.

Mr. Mancini: You spent \$250,000.

Mr. Caven: That is the fund.

Mr. Lehner: The fund did.

Mr. Caven: The government's cost was \$6,000.

Mr. Lehner: Are you speaking about money we spent last year for auditors, legal, etc.?

Mr. Mancini: The whole works; the whole shebang.

4 p.m.

Mr. Lehner: It is \$250,000.

Mr. Mancini: That comes from the fund paid by the industry?

Mr. Lehner: Yes.

Mr. Mancini: Do you think it is appropriate to give one firm \$150,000 a year in work? With the struggling lawyers we have these days--I have some Conservative colleagues who speak very eloquently about struggling lawyers, and I take their case seriously--would it not be better to split it up when we get into these high figures? That is a lot of money. I do not know.

Mr. Lehner: Perhaps Mr. Simpson wants to reply to that.

Mr. Mancini: If this firm ever folded, you would have somebody else. I know that is extreme and they probably will not, but the lawyer in that firm who has been doing this work might start up his own firm or something.

Mr. Lehner: From time to time the board of trustees looks not only at alternatives but also at backups because it would be well to have a backup. As in any other commercial situation, you are in a bit of a quandary. There are not many small cases on which you could have a young lawyer cut his teeth. If it is a young lawyer and it is an important case involving \$1 million and you lose the case, you have lost \$1 million.

Over a period of time the firm has proved itself invaluable to the board because it has picked up a great deal of knowledge as to how the industry works. It is a complex matter, and it is difficult for an outsider to penetrate until he has worked with it for a considerable period of time. It is like anything else. I do not know how well the fund would be served by jumping around too much.

Mr. Mancini: I am not suggesting you jump around. I want to make myself clear. In no way do I dispute the effectiveness of the firm. As you have told the committee, they have done a very good job for you, and we accept the evidence you give us. However, we are giving one firm \$3,000 a week.

I am not saying you should go out and say, "We are cutting you off," or anything like that. We do not want to risk the big cases, as you have suggested. But in smaller cases I think it would be fair to the general public and to the law industry as a whole to spread some of this around.

Mr. Lehner: You are quite right, and the board is contemplating doing that and looking at alternatives. If both gentlemen, God forbid, were killed in a motor accident, we would be stuck. A bit of backup would behoove us well. We are talking about that type of thing.

Mr. Mancini: It would be good for the board too, because it would be above any type of criticism if that were done.

Mr. Lehner: Absolutely; I agree with you.

Mr. Mancini: Those are all the questions I have.

Mr. Chairman: Perhaps I have obtained the wrong impression this afternoon, but I had the idea when you were speaking about the Cuban situation and the tour boat situation

that the fund--I will call it the board--would jump in. However, if there is a situation where one couple goes somewhere and there is an overbooking situation and the couple is forced into an alternative flea bag, you wash your hands of it. Those are the two extremes.

You can tell me my perception is wrong, but what would you do if it were something in the middle and five or 10 couples or 20 people went and hit the alternative accommodation situation, or half a dozen couples booked a charter boat, got down there and the thing had to be bailed with cans all the time to keep it afloat? Where do you people come in?

You do get involved in the situation of 200 people in Cuba, and you do not get involved with alternative accommodation for one couple. What do you do in the middle?

Mr. Caven: We would become involved, but the board would not necessarily get involved. I am not the board.

Mr. Chairman: I understood the board would get involved in that situation of the 200 people in Cuba.

Mr. Caven: No. The board does not even know about it.

Mr. Lehner: There is a distinction. The board of trustees administers the funds. The registrar looks after the stranded passengers. Apart from that, it is very rarely a case of black and white and a difference between a five-star hotel and a flea bag. There may be exceptions, of course, but it is generally a question of a five-star and a four-star or even a five-star and a three-star.

It is not usual for an operator to say, "The King Edward is not available; we will put you in the Spadina Hotel," to give a Toronto example. That situation does not arise very often.

Questions of quality are rather difficult to judge. How do you do that? In direct answer to your question, if there were, let us say, 10 people, to make the number smaller, and it were known that 10 people got stranded in San Juan because the boat they were supposed to take was not there because somebody made a mistake or the wholesaler went belly up, I am sure the registrar would look after the 10 people as well as the 200. It depends on the circumstances.

The members of the fund sit every two months to decide on matters before them. This is their regular function. On occasion, as has been pointed out, if required, there are conference calls where everybody gets on the line to decide on certain matters. If there is not time or it is inconvenient to get everybody together, or if time is of the essence, board members may meet at times other than the regular meetings. It depends on the circumstances. We are always on call. There are always a number of people there to deal with situations as they arise.

Mr. Chairman: Our researcher has a couple of questions.

Mr. Eichmanis: I was reading over your regulations, and I looked at regulation 17. I must admit I find it a bit confusing. Maybe I am misinterpreting it. It suggests the participants in the fund can withdraw and have to give two years' notice. Then there are some more explanations. After the participant has withdrawn, is he still licensed?

Mr. Lehner: No. He is not be licensed any more. If he withdraws, he has no licence, or he would not withdraw.

Mr. Rotenberg: If he withdraws, he does not get his money back.

Mr. Lehner: No.

Mr. Caven: I think that should be removed from the regulations in one of the housekeeping sweeps. It is impossible for an agent who is going to fold up to give you two years' notice.

Mr. Eichmanis: I can read nothing in here that says participation in the fund is a condition of the licence. Is that correct?

Mr. Caven: Yes, there is.

Mr. Eichmanis: It is there?

Mr. Caven: Yes. I will find you the section.

Mr. Rotenberg: You can be sure it is there.

Mr. Eichmanis: I am confused, because I did not see it. Is it in the regulations or in the act?

Mr. Caven: It is in the regulations. There is nothing pertaining to the fund in the act at all; it is all under the regulations.

Mr. Eichmanis: Sorry. I was just curious.

I think you touched on this earlier. Maybe you could give a clearer explanation of how the customer becomes aware of--I will not say his rights--his ability to go before the board. When you come off the plane and you have been dissatisfied, how do you find out about the board and where you can go?

Mr. Lehner: You just mentioned a word that does not come under the act, and that is "dissatisfied." We do not deal with dissatisfied people. We deal with people who did not receive service for their money.

Mr. Eichmanis: Okay. I was using the word loosely. For anybody who comes under the act, whatever the conditions are under the act, what are the ways they would come to know about the board?

Mr. Lehner: Here is the registrar.

Mr. Caven: Probably the first thing you would be doing

would be to go back to your travel agent to raise cain. He would very quickly tell you that there is an act and a registrar and that you should perhaps contact the registrar.

Mr. Eichmanis: But what if we were in an adversarial situation, and presumably we would be--I am mad at him until he calms me down?

Mr. Caven: He still would get you off his back.

Mr. Simpson: It is a terrific way to calm you down, saying, "Go claim on the fund."

Mr. Caven: Yes, "Go to the government; it will look after you."

Mr. Eichmanis: But is there any obligation on his part to tell you about the board?

Mr. Lehner: If he is smart enough.

Mr. Caven: I do not know if there is any legal obligation. I think 99.9 per cent do.

Mr. Rotenberg: What happens if you make it back from holiday and the travel agent is gone because he went belly up while you were away? I guess there has been enough publicity about the fund around.

Mr. Caven: After 10 years, I think they are aware of it all right.

Mr. Rotenberg: Do you advertise? That is not one of the government services is it?

Mr. Eichmanis: Do you have one of those glossies that all travel agents have indicating there is a board and if you have any problems you can go to the board?

Mr. Caven: Not of recent issue, no.

Mr. Lehner: What would happen would be that if he were not advised by the travel agent, and I cannot see much reason why he would not be, and he is mad enough and has legitimate reason, then he would complain to some other government department, which in turn would inform him of the existence of this facility to make a claim, I am sure. This is what these information departments are there for.

Mr. Simpson: Knowledge that the fund exists is very high in Ontario. It is reported in the paper all the time too. You will see every two months in the paper that the travel board met and did this or that. The registrar is on TV announcing that people are being taken care of.

Mr. Eichmanis: Mr. Caven, you mentioned the fact that the travel agents have copies of the claim forms in their offices.

Mr. Caven: Some do. If they do not, if the agent calls us, or the consumer does, we will mail them out to them right away. There is no problem on that.

The section number you were looking for is section 25 in the regulations: "Every travel agent and every travel wholesaler shall participate in a compensation fund, the terms of which are set out in the schedule."

Mr. Eichmanis: My regulations do not go that far. I stop at section 23.

Mr. Chairman: Are there any other questions? If not, I thank you very much for appearing before us this afternoon. Thank you for your answers and your co-operation.

Unless there is anything else from members of the committee, we will adjourn until tomorrow at 10 a.m., when we will deal with the Languages of Instruction Commission.

The committee adjourned at 4:13 p.m.

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STANDING COMMITTEE ON PROCEDURAL AFFAIRS

REVIEW OF AGENCIES, BOARDS AND COMMISSIONS:
LANGUAGES OF INSTRUCTION COMMISSION OF ONTARIO

THURSDAY, FEBRUARY 7, 1985

STANDING COMMITTEE ON PROCEDURAL AFFAIRS

CHAIRMAN: Treleaven, R. L. (Oxford PC)
VICE-CHAIRMAN: Watson, A. N. (Chatham-Kent PC)
Breaugh, M. J. (Oshawa NDP)
Charlton, B. A. (Hamilton Mountain NDP)
Cureatz, S. L., (Durham East PC)
Edighoffer, H. A. (Perth L)
Kells, M. C. (Humber PC)
Mancini, R. (Essex South L)
McNeil, R. K. (Elgin PC)
Miller, G. I. (Haldimand-Norfolk L)
Rotenberg, D. (Wilson Heights PC)
Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Clerk: Forsyth, S.
Assistant Clerk: Decker, T.

Staff:
Eichmanis, J., Research Officer, Legislative Research Service

Witnesses:

From the Languages of Instruction Commission of Ontario:
Churchill, S., Vice-Chairman
Paquette, R., Chairman
Wells, W. J., Executive Secretary

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON PROCEDURAL AFFAIRS

Thursday, February 7, 1985

The committee met at 10:20 a.m. in room 228.

REVIEW OF AGENCIES, BOARDS AND COMMISSIONS:
(continued)

LANGUAGES OF INSTRUCTION COMMISSION OF ONTARIO

Mr. Chairman: Is it all right, gentlemen, if we see a quorum?

Mr. Edighoffer: Due to weather conditions, I think that is in order.

Mr. Chairman: Shall we begin? The clerk has phoned Mr. Breaugh's office and cannot get an answer from either a secretary or from him, so I presume there are weather problems.

This morning we have with us the Languages of Instruction Commission of Ontario; Mr. Paquette, the chairman, and Mr. Wells, the executive secretary.

Mr. Wells: Mr. Churchill, the vice-chairman, will be here. He was flying in this morning.

Mr. Chairman: Do you have a statement, either oral or written?

Mr. Paquette: We have presented the material that was requested by the committee and we would like to make a few comments at the beginning. Some of these things are contained in the material we have given you, but it is just to let you know generally what the languages of instruction commission is.

It is, first, a commission established by the Lieutenant Governor in Council in June 1974 on the recommendation of the government of Ontario. Basically it was formed to help resolve disputes between school boards and parents over the provision of educational programs in the language of the minority group, English or French, as the case may be.

Since its inception, the commission has been presented with 78 disputes. Some of those disputes were really of long standing and fortunately the commission has been able to resolve the great majority of them.

You will see in your notes the main role of the commission is to consider any problems dealing with the language of instruction that are brought to its attention by school boards, advisory committees, or groups of ratepayers. The commission also considers all matters referred to it by the minister relating to French-language or English-language instruction when the pupils receiving such instruction form a minority.

When there is doubt, the commission also determines which linguistic group, English-speaking or French-speaking, should establish an advisory committee or whether, in certain situations, both groups should form advisory committees. It was resolved at one time that both should form an advisory committee.

The commission also investigates any alleged irregularity in the election of an advisory committee and, finally, the commission provides information to all parties concerned in order to prevent potential problems.

The modus operandi of the commission is as follows: when a problem is brought to its attention, the commission must determine whether the case requires positive action. If an investigation is decided upon, the school board is to take no action until the commission has had an opportunity to study the matter. The commission then appoints one or more mediators to examine all aspects of the question and they endeavour to bring about an agreement. If they cannot, they report to the commission.

If the mediator's report indicates a solution is not readily available, the commission itself investigates the matter and recommends to the board a course of action it considers appropriate. The board then informs the Minister of Education in writing whether or not it has accepted the commission's recommendation. This procedure allows school boards, which are publicly elected bodies, to maintain the autonomy granted to them by the Education Act.

This is generally the idea of our commission.

Mr. Chairman: I take it Mr. Churchill has arrived.

Mr. Paquette: That is correct.

Mr. Chairman: Welcome. We had just nicely started with Mr. Paquette outlining the workings or aims of the commission.

I will start the questions. I notice in our material it states that, when several groups come to you and there is no committee set up, the commission can be approached by a group of ratepayers of a board.

Mr. Paquette: That is correct.

Mr. Chairman: Let us say it is an "English" board and there are a couple of different francophone groups coming forward, I understand you can decide that group A of the francophones is the most representative and you are going to select it to represent the francophone community.

Mr. Paquette: You are suggesting the commission making an election as to which group is most representative?

Mr. Chairman: Right. I just wonder from several points of view that, first, group B, which you did not choose, may certainly question the choice; second, it looks arbitrary; and third, the choice might be open to the criticism that you are

choosing the least belligerent group, the one that would most easily solve the problem. What is your reaction to that?

Mr. Paquette: I am very pleased to report that fortunately this type of conflict has never arisen. Generally the French-language advisory committee makes its representation to us, but where there is no advisory committee it is possible, as you say, for a group of ratepayers to come forth. We have never encountered the conflict you describe; it has never occurred. But it is a very interesting point. Should it occur, I am sure the commission would feel its obligation to be completely objective and it would certainly look at this situation with a great deal of care in order to be fair. The commission always endeavours to be fair in its recommendations.

Mr. G. I. Miller: Since its inception, how many disputes has the commission had to deal with and how widely has it covered the province?

Mr. Paquette: We have had 78 disputes to look into. We have enjoyed a great deal of success with the implementation of our recommendations. It has not been 100 per cent, we are not batting 1.000, but we are batting a very good average. Generally speaking we have eliminated or prevented more problems than we have resolved, which I think is the role of the commission, if you look at the terms of its mandate. We have had some quite illustrious cases such as Essex and Penetanguishene go through us.

Mr. G. I. Miller: I recall in Haldimand-Norfolk there was an issue maybe two or three years ago. Were you involved in that at all? Did they come through the commission?

Mr. Wells: Mr. Chairman, the summary of cases submitted to the committee traces the work of the commission from 1974 to the present day. Each case is identified by board and the problem you were referring to is No. 37.

10:30 a.m.

Mr. G. I. Miller: What I am saying is, because you are coming before this committee, it certainly gives an indication of what has been carried out on behalf of the French and English issue in Ontario. I was not aware this had taken place. As a member representing the area, I think it is informative and gives us an opportunity to know exactly what you have accomplished.

Mr. Edighoffer: I just noticed by the report that this is actually the first report you have made public. Do you make regular reports to the minister?

Mr. Paquette: We report to the minister on an annual basis.

Mr. Edighoffer: Has this only come out because the committee called for it?

Mr. Wells: This is a cumulative report, so the information from each annual report is collated and drawn up as a

continuum from its inception to today.

Mr. Edighoffer: So that you report to the minister annually but it is not made public.

Mr. Wells: We must report, by legislation, but no, it is not made public.

Mr. Edighoffer: This gives us information regarding your work with boards generally. I believe your mandate is to deal with matters referred by the minister. What types of matters would be referred to you by the minister?

Mr. Paquette: We have had no specific case referred to us by the minister. We have had some general advice but not a specific case. I do not believe you will see any in this report, as there were none. These are all the cases. There has never been one referred to us by the minister.

Mr. Mancini: What general advice do you usually receive? It is a kind of vague way of explaining the conversations you have with the minister. What type of general advice is given?

Mr. Paquette: We have to make an annual report. We report to her generally. I do not want to eliminate the minister altogether--the minister shows a great deal of interest in the commission--but we have never had a specific problem presented to us by the minister. I have to report that, as it is exactly what happened. I know it was a question, but we never did have one.

Mr. Breaugh: I apologize for my time of arrival but I had a little trouble with the snow at the top of the Don Valley.

Mr. Chairman: These two gentlemen came in from Hamilton and it took them two hours, so they certainly understand.

Mr. Breaugh: So they will know why I am in a foul mood. I wanted to talk this morning about what role you might play in what is happening concerning the extension of funding to the Catholic schools. It seems to me that we have worked our way through a period of time when instruction in French or English with the public school boards--I do not know if we can say it has gone smoothly, but at least it has passed and we managed to sort out some of our problems.

Beginning next September we have a whole new set of problems. Just the practical problems of transportation facilities, staffing, things like that, will increase immensely. What kind of shape are we in to tackle this and what role have you played in all of it?

Mr. Churchill: To my knowledge, to the present our role has been strictly limited by legislation to what we are supposed to deal with, which is referrals by groups, by French-language advisory committees. It appears in general that there is potential for us to become involved in the minutiae of many of these issues, but in practice, when people begin referring to us, usually it does not come as a great dossier that arrives on our executive

secretary's desk, but it comes in the form of telephone calls, and these are the sorts of things that do not even get in this list.

It is our intention to pursue an old practice of providing cordial advice to people to try to solve their own problems because coming to us should be not a matter of first resort, but of last resort. As far as possible, we encourage amicable settlements, and all of us know that is not always possible.

The new situation with the funding issues is obviously going to affect both English- and French-speaking ratepayers, but right now we have no experience on which to base ourselves. Even though this is going on and there are things happening out there, so far we have had nothing to do with this.

In some cases, at present there is not a complete set of regulations or law governing this point. If it is a ministerial announcement, it is my understanding that we have to apply the laws and regulations as they exist and we try not to get into that area which is still being discussed openly by major commissions.

Mr. Breaugh: In effect, you have not played any role in what will happen next year in our secondary school system.

Mr. Paquette: No. That has not been our role at all, sir.

Mr. Breaugh: So you have not been used in an advisory capacity. Have you made any representation to the commission?

Mr. Paquette: No. We remain completely objective from any development in the province on that score, sir. We are quasi-judicial in our own minds and we would not get ourselves involved.

If they have a problem, if it carries on to a normal problem in the course of events, we will have to learn the problem. So we could not commit ourselves at this stage. It would not be fair.

Mr. Breaugh: Let me explore another area that is of some concern to me.

With the passage of Bill 82 a few years ago, we made some promises to people about the kind of classes their children can get. With the number of other commitments that have been made by the government around languages of instruction, we made more promises. All of this is coming home to roost now. What do you anticipate will happen with that?

The premise is out there now that whatever specialties my child may have and whatever language my child may need to speak, my local school board is supposed to be able to accommodate that. I am getting an increasing number of parents who are concerned that they are being told one thing in a formal way, and yet when they try to get the practical solution to the problem it is not there any more.

Are you anticipating that you are going to be very busy with that sort of problem, too?

Mr. Paquette: We could very well be.

In answer directly to the last part of your question, going back to you, Mr. Chairman, we could very well be quite busy with Bill 82, Bill 119 and so forth. But I would like to establish the fundamental premise that our commission in no way, shape or form gets involved in the legislation, in the given of certain aspirations of the population. We have nothing to do with this.

We come into the picture only when a conflict arises; we have nothing to do with the implementation. For the sake of objectivity, we do not even give an opinion. They never ask our opinion as to whether Catholic school funding should be extended. We are never asked about the situation of Bill 82, special education, or whatever. We do not get into this.

We are rather, as I described before, a quasi-judicial body. If a conflict arises, we are called upon to give an objective recommendation facing the problem, after a due study by ourselves and our mediators. I want to establish that very clearly. We are not involved in the legislation leading to Bills 119, 82, or so on.

Mr. Breaugh: Understanding that you are not involved in the preparatory work, it would be my judgement that there are a fairly large number of parents who, for a variety of reasons, have sat around for a year or so and tried to deal with problems locally and who are now beginning to look for mechanisms whereby they can get a problem resolved.

I had one last week who had his little chat with the teacher, principal and supervisor from the board. He talked to a committee from the board and now he wants to know: "What else can I do? I have been told my child has a special need. I have been told, through newspaper reports and other publications, that the school board has an obligation now to provide my child with a service, and I have gone the local route."

10:40 a.m.

I suspect there are a lot more of them out there who will be looking around and asking: "Where else can I go? I have had a little chat locally. Now I am looking for the mechanism that is supposedly in place to resolve my problem."

Mr. Paquette: Mr. Chairman, I would like to point out another thing that might be of some assistance to your thinking on the point. The commission is addressing itself to educational programs in the language of the minority group. We are limited; we do not have too wide a scope. We are dealing with minority group situations. In some instances in Ontario, surprising as it may be, it could be an English-speaking or a French-speaking group. This is the type of problem we are called upon to resolve, but our scope is not as wide, nor does it embrace a large mandate that would lead us into this.

Mr. Churchill: I might add that, as I understood it, your question referred to individual parents. Ordinarily, we are

not in the business of receiving referrals from individuals. That is the role of school boards and school administrators. We receive a referral in the event that a group of minority ratepayers within a given jurisdiction have a problem affecting them which they as a group feel is important.

Of course, it is possible that the referral might deal with an issue of so-called special education, for example, affecting a group of them or even an individual, but that is not always the case. We have had one or two cases where things have been referred to us that affected special education matters. We have dealt with them just as we deal any other matter, usually by a telephone call and words of advice followed by, if necessary, a full referral and a mediation of some sort.

It is not basically our business to deal with individual matters, but rather with group matters, at least as decided by the group. If the group wishes to endorse one individual concern, of course, we can be involved in it.

Mr. Breaugh: Perhaps it would help if I went through a fairly typical situation in my area. Both boards have FLACs. Just talking to those people, they seem to be quite--I had better be careful here. I was going to say "content." I do not think they are content, but they are reasonable people and understand that boards are working with new legislation and have some problems. They have at least recognized that there is a minority language group around and given it official recognition.

Francophones who have secondary school children are understanding enough that they know their kids will have to get on a bus and drive to a high school in Toronto. We have one school, which is the francophone school. In most of the municipalities in the school board's jurisdiction, there will be some French immersion classes, so there is a beginning. If one is extremely moderate and content with small gains, one could say language of instruction for a minority group is at least recognized.

Now we have flowing into that mix people saying things like, "Fine. If my child does not have any special needs, I can find a school." It is fine to say there are French immersion courses in most of the municipalities, so in my town a kid could go to that class. But what if my child has special needs? Where does my child get that kind of service?

The reality in my area--and I suspect in most areas--if a child has special needs, is that the language of instruction will be in English. It is not contemplated that there would recognition of the second language. Do you anticipate that you are going to get more active in that kind of thing, because that is a particularly thorny problem?

Mr. Paquette: Mr. Chairman, I do not think there is any doubt that implementation of either Bill 119 or Bill 82 will create a great deal of work for the commission. To anticipate the nature of the request or the demand made on the commission would be premature at this stage of the game, to my way of looking at

it. If a problem is presented to the commission, there is no doubt the commission, if it is properly introduced, will entertain it. There are no two ways about that.

Mr. Breaugh: My difficulty is that within a year, if I were a francophone living in my community, I will supposedly have a legal right to insist that my school board, public or separate, provide my child with an education that meets not only special needs but also the language requirement. From a practical, pragmatic point of view, there is not a hope in hell that either of those two school boards can do that; yet there will be a legal obligation to do it. I am a little concerned about how we are going to resolve this.

Mr. Paquette: You are aware, of course, of the possibility of buying the education.

Mr. Breaugh: Where?

Mr. Paquette: There is nothing available anywhere.

Mr. Breaugh: Yes. If I were sitting on the school board, I would probably start looking at that. "We are not going to set up a special needs class for two kids. We will buy that from somebody else." However, where will I buy it? I do not know where it is available.

Perhaps I am wrong. Perhaps there are programs in the French language for children with special needs in Metropolitan Toronto, but I do not know of them and I have a fairly good grasp of most of the school boards and most of the programs. I do not think they are there. Are they?

Mr. Chairman: If it is something like a speech therapist in Oxford at the French school at Woodstock, the separate school board does not have any speech therapists. Where would they buy a speech therapist's time for the child who needs a speech therapist at the francophone school at Woodstock?

Mr. Churchill: I think you have raised the general issue of how to implement a new policy in a large educational system. I do not think our job is to anticipate the steps that have to be made by all the school boards in Ontario to meet the needs of their citizens. The new law was brought in not only to serve a minority but also to serve the majority.

It seems to me there are a lot of issues that are being worked out currently. I believe a large number of people in the educational system are aware that these things have to be dealt with. We are going to be involved in them, not in giving either you or the minister advice on those issues but only at the point where it appears there is a significant dispute.

For example, at a school board it may be they will say: "We do not have a given type of specialist to deal with your child this year. We are taking steps and we will do this to help." That does not mean a dispute exists at that time. People sometimes will

wait if things are working in the right direction. What we have to do is decide to intervene only when an issue comes to the point where it appears that local agreements about implementation of policy and law are not sufficient. At that point, it comes to us and then we attempt through mediation to help to resolve the dispute. It is only as a last step that we would make a recommendation if the dispute could not be resolved at that level.

Mr. Breaugh: The difficulty I am having with all this is about people who walk into my office. For example, a few years ago a lot of my francophone parents would have been very happy if there was a francophone school in my community and, if you did not live right in Oshawa, you could get transportation to the school so that in other municipalities served by this school board there was at least some recognition of minority language rights.

I am now getting people saying to me, "It is fine that my kid can go to school and receive instruction in the French language, but my kid has a learning problem and I cannot find a solution to that." We are caught on a bit of a petard. "I have recognition for my language rights, but I am still not getting the education the kid next door can get. That is wrong and I want to know what I can do about it." I am going to be saying, "There is a little commission you can talk to." I want to know what the commission is going to be able to do. That is my problem. It appears we have not anticipated a great deal of this.

I think we probably have a year or so when people will sit around and say, "We have this much recognition and we should be satisfied with that." However, when you push that a little further, they are going to be saying, "It is fine to win a moral victory, which I have done, or a symbolic victory, which I have done, but in the meantime my kid has some special needs that are not being met." I do not see much work going on that is going to resolve that problem in the foreseeable future.

10:50 a.m.

Mr. Paquette: Of course, it would be the role of the commission to explain this situation to the grieving parent. Sometimes it is humanly impossible at certain stages. There are no ifs or buts, it is just humanly impossible, and if it is, the commission would have to look into it. As Mr. Churchill said, if the board is genuinely trying to resolve the problem, we cannot ask for miracles overnight; we have to be reasonable in those demands. Demands are fine but the role of the commission is very often to say to the demanding public, "Paris was not built in a day." Do you know what I mean?

Mr. Breaugh: I notice in your report, for example, that you did resolve a dispute with the Durham board, but it was a transportation problem which is relatively easy. "We will get you a taxi, a bus or whatever." The nature of these other problems is not so easy.

For an anglophone child who is going to the separate school board in my area, my board has one type of special needs program

under way for next fall, but parents think they have a legal right for any kind of special need. I am having a little difficulty conveying to them that we ought to be calm and reasonable and that they cannot provide a program.

Being a former teacher, I know in a number of areas we do not know what the problem is yet, let alone how to provide for special needs for kids. When you start talking to educators about the mumbo-jumbo of the trade and what we might do for these kids, it is still pretty much by guess and by gosh. When we throw a language problem into that, I am at a bit of a loss.

Mr. Paquette: It is a problem; there is no question about it. It is a problem the commission will be facing. It is anticipated that the commission will certainly have to adapt itself to an onslaught. If everything is put together, in my estimation the commission will be required to face an unbelievable amount of problems.

Mr. Breaugh: The real difference in the mix as I see it is that up until now we have been able to say, "The school board does not have a legal obligation to provide your child with that kind of education." Within a year we are not going to be able to say that any more. Parents are aware there is a Bill 82 around, there is a Languages of Instruction Commission and there are some legal rights here.

They are going to be saying: "That is fine. I want to be reasonable, but I also have a legal right here. The right is enshrined in law, and I want to know how you are going to obey the law." It is going to be different.

Mr. Paquette: My only reaction is that we are fully aware of what is to come. If everything is put together, as I said, if all the bills are passed and become law, there is no question it will create a mountain of problems. This is maybe only the tip of the iceberg.

Mr. Chairman: Could I take a supplementary on that? If, for example, next September you have a situation like the one I have in Oxford where there is one francophone school with 70, 80 or 100 children and anywhere between one and six or seven kids who need special education, at the point when the parent says, "I have Bill 119 and Bill 82; that is the law of Ontario," does the commission have the power to say to that board, "You must hire a speech therapist" or "You must hire a special-ed teacher" or "You must establish a special education class in French"? Does your board have that power?

Mr. Wells: The only power the board has, and has had since it was created, is a power of recommendation. In other words, unless the legislation were to be changed, as it stands now we are still in the business of trying to reconcile parties in conflict, not individual cases. When these are brought to our attention, we deliberate. If we accept that case as a referral, by law we must name a mediator at once, forthwith.

That mediator tries to bring about a settlement. The recommendation of the mediator comes back to the commission and is then studied by the commission. The commission then makes its recommendation to the board. It may not be entirely identical to the mediator's recommendation. It can be varied once it has been discussed in a meeting.

Mr. Chairman: But your authority ends at the recommendation. You do not have any enforcement abilities.

Mr. Wells: In Bill 119, when we read it carefully, we see that the minister can make it an act of law, in the sense that the minister could go to the Supreme Court and have it as contempt of court if the board does not follow the final recommendation of the minister, which is studied from our recommendations but which could vary from our recommendations. The only executive power resides with the minister and not with this commission.

Mr. Paquette: It is only a recommendation. It can only make recommendations. The reason Bill 119 covered it is that sometimes the boards would even ignore the recommendation of the commission. To rectify the situation, Bill 119 came into effect to say: "The recommendation cannot be ignored. From now on if you do, there will be consequences." Before, there really were none.

When it was originally created, Mr. Wells was the Minister of Education. The commission has always wanted to have this power but was never given it. It was more or less a moral persuasion situation. Boards have been known to completely ignore the recommendations with the situation and setup as it is at present. This is why I think it is essential. For anything of the nature which is described by my friend, for us to be able to bring about a solution to it, we must have powers.

Mr. G. I. Miller: Did Bill 119 come in because of recommendations from your commission?

Mr. Paquette: In part, I would imagine our intervention had something to do with it. Bill 119 is only a very small part of it. Our situation is a very small part of Bill 119.

Mr. Chairman: Mr. Eichmanis has a supplementary.

Mr. Eichmanis: Bill 119 does not give you the power; it only provides recommendations. The minister has the power to enforce. Would the school board, seeing that in the legislation, accept your recommendations rather than wait for the minister to come down on them?

Mr. Paquette: That is the idea, sir.

Mr. Eichmanis: In effect, although in legal terms you do not have the executive power, in practical terms Bill 119 forces the board of education to view that recommendation almost as an executive order.

Mr. Paquette: Practically.

Mr. Churchill: There are many cases where we might make a recommendation that the minister would not accept. That always exists. The possibility that our recommendations will become more binding on the school system also creates an additional responsibility. We cannot allow ourselves at any time through mediation to give vague recommendations in the future, nor can we make recommendations that are manifestly unfeasible in terms of the practicalities of running schools.

In this situation, I do not see that our additional powers give us greater latitude to do what we want, but they do give us much more responsibility to work hard to come up with solutions that are practical in a local situation. I see that as the consequence of this. More than having more power, I think we have more work.

Mr. Paquette: Responsibility.

Mr. Eichmanis: May I just follow up on that? You are implying without saying so--and correct me if I am wrong--that in a sense you will become more conservative. I do not mean that in a political sense but in a--

Mr. Churchill: There is no implication of that. It merely means that the nature of the recommendation we give may, in fact, be formulated in slightly different terms because of the fact it might get carried forward into actual execution. You can recommend something, but if you recommend that something happen in general terms, if a school board wants to act on it, obeying us, some of the administrators are going to want to know the detail: "If I close this, open that and put this many people there, is that going to comply with this general directive to satisfy this need?"

Therefore, it seems to me that as we begin developing our recommendations in the future, we are going probably to have to add an additional amount of detail. In other cases we are going to stay out of it and say that detail is for you to work out. It is very hard to predict how this is going to work. My expectation is that it will work as in the past. Most disputes are solved before they get to us. Many of those that get to us are solved in mediation and only a few involve us.

11 a.m.

Mr. Paquette: Not to ignore the question of this gentleman, indeed it has just been passed now; so we are very happy with that decision. Time will tell how we live with it, but what you are saying is true. Indeed, we can hardly be ignored from now on; this is what we were after.

Mr. Breaugh: You may be surprised.

Mr. Eichmanis: Have the francophone community groups supported Bill 119 and are they in agreement with it?

Mr. Paquette: It did not completely satisfy them, if that is what you are asking, but it did satisfy them to the extent

that they reacted.

Mr. Eichmanis: Did they actually want you to have the executive power or less power or what?

Mr. Paquette: It is hard to say, but the opinion is divided. As I say, generally I think they have been seeking, as we all know, more powers for the commission. They have been yelling that for five years. That was the answer given: Bill 119. We have had no practical experience with it but it has certainly calmed things down.

Mr. Breaugh: There are two other areas I wanted to explore with you. There has been a fair amount of discussion about whether language instruction really works. As someone who studied the French language for seven years, for example, and can barely get a beer in a restaurant, I have to share some of the concern that we are spending a lot of time, money and effort to teach the French language, in particular, in our English high schools. I do not think there is anybody even pretending that the kids are coming out of secondary schools able to speak two languages.

I seem to hear similar kinds of complaints from francophone parents as well; they want their children taught in the French language but the English-language instruction is nonexistent. In other words, they almost pick up the English language because basically they live in an English community. The success of instruction in either French or English seems marginal at best. What is your assessment and what comments would you have on that?

Mr. Churchill: I do not see that it is our role as a commission to comment on the efficiency of teaching French to English-speaking students, very honestly.

We are aware that behind many of the referrals to us there are Franco-Ontario communities in which the problem of linguistic assimilation is a major issue. Many of their demands to have schools of their own that create a cultural environment where their young people are encouraged to use the French language are founded in this reality of the difficulty of using French outside the school system in many communities. Behind it we have this general problem of theirs, and it is the motivating force not only behind a lot of our work but also behind a lot of the legislation you have before you.

We are dealing with quite different issues here. Our role is to look at this need of a minority community when we are dealing with the francophones--in some cases it is the English--looking at their needs as a group. It is recognized in our law that they need to have education in French, if they are to maintain their language and culture, in the case of the French-speaking communities. As I see it, it is our job to help that out wherever it is within the framework of law and reason to do that, but we do not try to comment on it.

As an individual and perhaps separately, outside this committee room, I would be quite willing to provide you with some information on my personal research into the problem, but I think

that is a different role.

Mr. Breaugh: For example, I have an increasing number of anglophone parents who want their children to be bilingual and want to send their children to francophone schools or to immersion classes. They are now beginning to wonder whether this is working. I have had several who have said to me, "I am giving them instruction in the French language, which is basically what I want, but I am not sure about the quality of instruction; I am not sure about the quality of education."

A number of parents have suggested to me that on their agenda was, "I want my child to speak Canada's other language." The child went to school for three years and developed a learning disability that no one paid any attention to because they were content simply to teach them in the French language. Another level of education was missing. I am getting similar complaints from some francophone parents who say, "This is not quite working out the way I thought it would."

Mr. Paquette: Mr. Churchill is highly qualified, as you all know, from the Ontario Institute for Studies in Education, but from a practical point of view, I say the education given to a Franco-Ontarian in our Ontario system is very good. There is no problem with it.

The education given in French in the immersion classes in our educational system in Ontario is also coming about with a great deal of popularity. In Hamilton, for example, they started lining up at five o'clock in the morning to enrol their kids. It is extremely popular, and the degree of bilingualism often required in the practice of professions in this country will be met by these immersion classes. That is only my opinion. Probably everyone will jump on it. I do not criticize both systems highly.

As far as the francophone system is concerned, I am a product of the francophone system from beginning to end. I do not think I have lost anything in education. It was harder in my day to go through the system than it is today. It has greatly improved. This commission is trying to keep the improvement going.

Mr. Breaugh: I am afraid my assessment would be a little different. I agree that if I want my child instructed in the French language, that can happen. It is the same with the Catholic secondary institutions. We can try to provide children in Catholic high schools with as much programming as we can, but I do not think there are many of us who pretend that we offer the same variety. We do not offer the same kind of education to Catholic high school students as we do to public secondary school students. We always argue that the quality is much better even if the variety is not there.

Mr. Paquette: I am getting away a bit from my field but I am sure that--

Mr. Breaugh: Let me just poke into one other area and then I will leave you alone.

Mr. Chairman: Mr. Wells had a question.

Mr. Wells: This is just a comment for the information of the members of the committee. We must make a clear distinction between French first-language instruction and French second-language instruction. Immersion counts as second-language instruction and therefore comes under the English guidelines and not the Français guidelines. Therefore, we as a commission have no mandate whatsoever to deal with immersion classes because they are basically in the majority language of instruction. Even though they are teaching French, they are not teaching Français. Français comes under the other guidelines.

Mr. Breaugh: That distinction is engraved on all our lives.

What is going to be the impact of the movement to recognize that there ought to be francophone trustees on school boards and to institutionalize that? How is that liable to impact on what--

Mr. Paquette: You are talking about the guaranteed representation?

Mr. Breaugh: Yes.

Mr. Paquette: If it is passed, if it comes about and there is guaranteed representation for francophones on the boards, it would replace the committees that exist currently and it would more or less give them the post of trustee. Perhaps Mr. Wells can answer as to how that would work.

11:10 a.m.

Mr. Wells: If there are elected trustees, if this comes to pass, I think the greatest area of concern we will be approached about will be questions of jurisdiction, sole or several joint responsibility for various subdivisions, budgetary considerations, accommodation, staffing, etc.

Therefore, if legislation similar to Bill 160, which was given first reading in December but died on the Orders and Notices, comes through and you have French-speaking trustees or minority language trustees--because it could be the other way elsewhere--there may be some differences of opinion as to what is the sole jurisdiction.

Even though you can spell out so many areas where it is the sole responsibility of one linguistic group or the other, there will be a lot of grey areas where we will be called upon to try to mediate and work this out gradually on a long-term basis.

Mr. Churchill: There is another implication of such legislation. If a francophone parent or a group of parents disagree with decisions made by francophone representatives, it is not our job to intervene on behalf of the elected representatives of the French-language community to take actions they decide are not appropriate.

In a large number of jurisdictions, therefore, it is possible that a considerable amount of our potential case load will not exist because the minority representatives will be dealing with the minority and making decisions on its behalf. Our work will come more at the level of jurisdictional issues in those areas where there is a guaranteed representation with specific control. At that point, if there are problems, the recourse is probably going to be for parents to avail themselves of various dispositions of the Charter of Rights through the court system.

This is further down the road, but my expectation is that the mechanism for dealing with our commission will be modified significantly for large numbers of parents who today do not have a representative on a school board whom they feel is their representative. Later it will become a dispute and probably something they can settle at the ballot box next time rather than by coming to the Languages of Instruction Commission of Ontario.

Mr. Breaugh: What are your thoughts on that? It appears to me there is a two-edged sword at work here. As it stands now, if an advisory committee runs into a problem with a school board, we do try to talk it out. We try to mediate. Your commission is available. Once in a while we stumble upon a major argument in a community, but an attempt is made to plain-talk it out.

If we move to a more formal status of minority language rights on a school board, the opportunity is there simply to have a vote on it, and if the vote is nine to five, you lose and that is the end of it.

I wondered whether you were feeling the current approach, using the commission, is a preferable way to do it. I have certainly listened to a lot of francophones argue very vehemently for the fact that in fairness they ought to have some formal recognition, some institutionalization of their language rights on a school board, but there is another side to that. In gaining that, one may lose another technique to resolve the problem.

Mr. Paquette: There is no doubt the major part of the population wanted guaranteed representation, but not as a true answer to their aspirations. They really want homogeneous school boards, which they cannot get, but they can get guaranteed representation.

The commission, in its endeavour to be completely objective, has not always met the pleasure of the francophone population either. Very often we are criticized within the francophone population because we apply the rule objectively. We do not go to one side or the other. We stay very objective--maybe too objective sometimes. I do not know whether the facts speak for themselves.

Mr. Breaugh: I wish you well, because I think you have a very difficult task ahead of you and one that is about to be extremely complicated in a hurry.

Mr. Paquette: We do not underestimate at all the overwhelming possibility of cases with the incoming legislation.

Mr. Breaugh: I think it is a matter of time until a number of people start to say, "You cannot give me a right in law and give me no practical means to have that law obeyed." People breaking the law are not crooks. They are formally elected bodies who are not obeying the laws of Ontario.

I hope we do not, but we may get ourselves into situations not unlike what is happening in Quebec with their language instruction, where the law says one thing and a duly elected body is in place to carry out the law, and there ain't very many people who agree with what that body is doing.

Mr. Paquette: We have come across some very hard, entrenched positions in the past, such as Essex and Penetanguishene, and I am sure the commission will adapt. What form this adaptation will take, I cannot predict at this time, but on the other hand, I am sure we will adapt.

We do not underrate the problem. We are aware of it, and we have not had to deal with it up to now. You see what we had to deal with in the past. This is something in the future, and it is something that is food for thought.

Mr. Breaugh: I am sure the law will be obeyed where numbers warrant.

Interjections.

Mr. Eichmanis: I was just noticing, in looking over your cumulative annual report, where you mentioned the creation of entités. Could you explain what entités are?

Mr. Wells: The word "module" or "entité" means a unit, an instructional unit. Right now, the legal terminology is "French-language instructional unit" or "English-language instructional unit."

Mr. Eichmanis: Which means what?

Mr. Wells: Whenever there was a board looking for a site that was homogeneous, they would call it "une entité du langue français," a French-language instructional unit, which had its own quarters, housed in its own unit; so it was a search for an autonomous site.

Originally there were a lot of secondary schools in the province that were called bilingual, although there is no such legal animal. They were called bilingual high schools. When one group wished to become an entity, it wished to have its own principal because to have a school you must have a principal and a group of pupils; so once it became a school, it became an entity of its own, and that is what they meant by that.

Mr. Eichmanis: Does it always have to be a school, in other words, with a principal or teachers, or can it be a classroom?

Mr. Wells: Yes, but not necessarily a building.

Mr. Paquette: A school is not necessarily a building.

Mr. Wells: The building is not a school. A school is a group of pupils with direction and teachers.

Mr. Eichmanis: Can the entité be as small as a classroom?

Mr. Wells: Normally not. You would have to have a viable entité, a viable unit.

Mr. Eichmanis: I was thinking of rural schools, at least in the old days.

Mr. Wells: Oh, one-room schools.

Mr. Eichmanis: I was wondering whether I have interpreted clauses 275(13)(a) and (b) correctly. It says: "When a matter is referred to the commission, (a) it shall appoint mediators" and so on; then clause (b) says, "except where a matter is referred to it by the minister, take no further action where it considers that the furtherance of such matter is not conducive to meeting the educational" needs.

How do you interpret that? I interpret it to mean that you do not have to appoint mediators if you do not think it will further the objectives of the community. Is that a correct interpretation?

Mr. Paquette: In other words, we appoint a mediator only when we cannot resolve it ourselves. We take a first chance at resolving it through our own mediation. If that fails, then we appoint a mediator.

11:20 a.m.

Mr. Wells: Let me express it in different terms. If we accept the submission that comes to us as a referral, we do not have the option to do anything else but to name a mediator forthwith. However, until we have accepted that as a bona fide referral, we have latitude to explore.

Let us say, for example, if the documentation for the steps required by the legislation has not been carried out by the French-language advisory committee or by the parents' group and its elected spokesperson, if the modalities have not been carried out as the legislation says, we can have a period of time when appeals are made to the parties, to both or to only one, to rectify the situation and say, "The board has not been notified that this is coming as an appeal to the commission."

These things have to be done, but once it is accepted as a referral, we have no choice but to proceed immediately to name one mediator or more.

Mr. Eichmanis: It seemed to me that the layman looking at that would see there is an option of not doing anything.

Mr. Paquette: Once a case is accepted by the commission,

the commission must appoint a mediator.

Mr. Eichmanis: I see.

Mr. Paquette: Any prior consultation and negotiation cannot come until then. Once the commission accepts it, it must.

Mr. Chairman: Mr. Churchill, do you wish to add to that?

Mr. Churchill: I was simply going to say one of the things about a referral is that the people who are doing it are usually doing it for the first time. So before we get the referral, we frequently get some inquiries as to what to do in the situation and this already touches off our distant early warning system.

We attempt as far as possible to provide a bit of guidance to any of the parties who wish to ask us about what they can do. In essence, we are not going to wait until we get a full, formal thing before we try to help people. This is the role of our executive secretary, who quite regularly gets these matters and has to deal with them.

Mr. Eichmanis: So the mediation is already taking place informally before the actual mediator is brought in.

Mr. Churchill: Quiet, friendly advice is often given.

Mr. Eichmanis: Subsection 276(4) provides that a matter can be delayed. Your reaction to the mediator's report can be delayed for some time.

Mr. Churchill: You are referring to the extension of the period of mediation.

Mr. Eichmanis: Yes.

Mr. Churchill: We have before us a slightly differently numbered version.

Mr. Eichmanis: I am sorry. I wondered whether in some instances of a conflict that affects the children and their school year, there would be circumstances where you could delay making a decision that would materially affect the children for that year, if they might lose the year, let us say, in secondary school?

Mr. Paquette: I believe what is meant in this section is that once the mediator has been appointed, he must operate within a given length of time. I believe that is the interpretation there. Once we have accepted the referral, we must appoint, and then we are bound by law.

Mr. Churchill: Can I give you a little more on this? Before I joined the commission, I once was a mediator. When you are a mediator, you sometimes discover that the fact-finding process simply cannot be fitted into the time available because the people you want to talk to are not there. The chairman of the school board may not be able to meet with you, the director of

education is not in that area at the time, and so on. This gives the commission flexibility in ensuring that a proper inquiry is made and that a proper effort at mediation occurs.

We have that request from mediators who say to us, "I have had a few meetings with the parents' committee and with the board, and they have not come to an agreement yet, but I am optimistic that if I can keep them meeting again for another week or two, or maybe three, they can come up with a solution."

In that case the commission says, "Fine, we will extend the period of mediation for a certain period." The purpose of the 21-day delay or the short delay in there is to protect the interest of the minority. The purpose of the extension is to allow us to protect the interest of the minority in a different way, so our mediators are not allowed just to disappear.

On the other hand, our job is to deal with the minority group in each community as fairly as possible, and if we think we can get an agreement to their solution rather than imposing one, we extend mediation.

Mr. Eichmanis: I was thinking of the worst-case scenario where that could drag on and the schoolchildren could be adversely affected by the delay in mediation.

Mr. Paquette: We would never permit that if schoolchildren were to be affected by it.

Mr. Chairman: I have a further question that probably has an easy answer. How do you decide mechanically who is a minority and who is a majority of English-speaking or French-speaking pupils?

Mr. Wells: A head count of the number of pupils in a jurisdiction will give you that figure. It fluctuates from year to year because the enrolment in a school may vary slightly. In one case two committees were appointed, an ELAC and a FLAC, English-language advisory committee and French-language advisory committee, for the same board.

More or less traditionally, some French-language instructional units in municipalities are in the elementary sector of the public sector, but usually in the province, if we look at the pattern, elementary education is provided in the separate schools and secondary education in the public schools. It is by actually looking at the number of pupils of a board, because the legislation always talks about resident students or pupils of a board. It is not necessarily the municipality.

You may have more adults who are of French descent or are French speaking, but basically we are looking at the children who attend a particular board school. If at board X in northwestern Ontario there are perhaps 30 children attending secondary school, and if you look at the English numbers from the registers there are 7,000 or 5,200, it is not a big problem to determine who is in the minority.

Mr. Paquette: Let us just say that when the head count is quite close, we exercise some latitude and say they can both have a committee. We are not strict with that because it is generally very obvious. There is no problem at all. The only time it becomes a question is for ELAC. If it is a FLAC committee, it is a French committee; if it is ELAC, it is an English committee. Then it generally is about even and we allow them both to have a committee.

Mr. Chairman: Since the committee seems to have exhausted its questions, I thank you gentlemen for coming here today under adverse conditions and I thank you for your answers.

Mr. Paquette: It was our pleasure to be amongst you and if we can be of any assistance do not hesitate to ask.

Mr. Chairman: Unless there is anything to be brought up this morning, the committee will adjourn and will go in camera this afternoon at two o'clock.

The committee recessed at 11:28 a.m.

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STANDING COMMITTEE ON PROCEDURAL AFFAIRS

REVIEW OF AGENCIES, BOARDS AND COMMISSIONS:
ONTARIO GRADUATE SCHOLARSHIP SELECTION BOARD

TUESDAY, FEBRUARY 12, 1985

Morning sitting



STANDING COMMITTEE ON PROCEDURAL AFFAIRS

CHAIRMAN: Treleaven, R. L. (Oxford PC)
VICE-CHAIRMAN: Watson, A. N. (Chatham-Kent PC)
Breagh, M. J. (Oshawa NDP)
Charlton, B. A. (Hamilton Mountain NDP)
Cureatz, S. L., (Durham East PC)
Edighoffer, H. A. (Perth L)
Kells, M. C. (Humber PC)
Mancini, R. (Essex South L)
McNeil, R. K. (Elgin PC)
Miller, G. I. (Haldimand-Norfolk L)
Rotenberg, D. (Wilson Heights PC)
Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Substitution:

Hennessy, M. (Fort William PC) for Mr. Kells

Clerk: Forsyth, S.

Assistant Clerk: Decker, T.

Staff:

Eichmanis, J., Research Officer, Legislative Research Service

From the Ministry of Colleges and Universities:

Rajagopal, S., Policy Analyst, Student Awards Branch

Witness:

Smith, Dr. R. W., Chairman, Ontario Graduate Scholarship Selection
Board

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON PROCEDURAL AFFAIRS

Tuesday, February 12, 1985

The committee met at 10:25 a.m. in room 228.

AGENCIES, BOARDS AND COMMISSIONS:
ONTARIO GRADUATE SCHOLARSHIP SELECTION BOARD

Mr. Chairman: Gentlemen, having a quorum, we will start. I am sure several others will come when they can make it through the snow and slush.

This morning we have the selection board for Ontario graduate scholarships. Dr. R. W. Smith, would you come up? Mr. Rajagopal is here from the Ministry of Colleges and Universities. Perhaps he can assist Dr. Smith.

Welcome to the procedural affairs committee. Do you have an opening statement, either written or oral?

Dr. Smith: I do not. I read some letters that passed between Mr. Rajagopal and yourself. I presume the committee has a general description of the activities of the Ontario Graduate Scholarship Selection Board.

Mr. Chairman: Our researcher has provided us with background and information.

Dr. Smith: Perhaps I could make one comment, which is unprepared. I chair a small group of professors who spend a considerable amount of time, usually exercising great diligence in attempting to distribute the 1,200 scholarships in what they believe to be the fairest way possible. The methods they use are evolving ones and are reviewed every March after the competition.

Mr. Chairman: I had one question in mind. It would appear from the references that all students are eligible: Canadian citizens, -landed immigrants, students on visa, etc. Is that correct?

Dr. Smith: Yes. All students at Canadian universities are eligible.

Mr. Chairman: Even though the maximum award was increased slightly this year, by less than five per cent, I notice the number of individual awards was decreased by 20 or 25 per cent. Could you explain that?

Dr. Smith: Perhaps Mr. Rajagopal could comment on that.

Mr. Rajagopal: There are two ways of looking at the problem. One is the procedure we adopt to award the scholarships. Normally, we send out offers of awards to the top contenders, but

we give them some time to accept or reject. If someone refuses the award, we go back to what is called the reversion list. The process goes on from this list; so there is a timing problem in the awarding of graduate scholarships. Because of the delay, some could be deferred until it is close to the next year.

The second problem relates to the amount of the award. An Ontario graduate scholarship is still comparatively smaller than some national awards such as the Natural Science and Engineering Research Council and Social Sciences and Humanities Research Council scholarships. That could be one reason for a refusal. It is partly procedural and partly the financial lure of the award. It is intended to attract the top talent from the graduate community.

Mr. Watson: About the operation, if you are going to go back to a few basics, whom do you decide gets the scholarships and how? Is it done on a province-wide basis? Is it done university by university? Is it done by individual application? What is the philosophy and background of awarding them?

Dr. Smith: There are 1,200 awards. Before starting, 45 are taken out of that. There are five institutions that are considered to have a special need and nine awards are given as a block to them. Then they make the awards, attempting to use the same criteria the board uses in making recommendations.

10:30 a.m.

We have 45 institutional awards, and then 60 are allocated to visa students. The remainder, which is 1,095, are then broken down among the various discipline groups, such as humanities, social sciences, applied sciences, biological sciences and physical sciences.

The number of awards allocated to each of these disciplines is done on a pro rata basis. We took the total number of applications, the total number of which in this case, in the regular, nonvisa groups--these are Canadian students or landed immigrants--was a shade over 6,500. Of those, 2,500 came from students registered in disciplines in the general area of social sciences; so 2,500 over 6,500 of the approximately 1,100 scholarships went to that group.

The social science group has panels dealing with particular disciplines within that group. The number that went to them was 416. That was broken down among the various panels. Each panel of three professors--a chairman and two others--ranks the various applications that come before it and then makes recommendations for the 416 places.

It also compiles what is called a reversion list. The reversion list is that list of candidates from which new candidates are drawn if somebody on the first list, the successful list, does not choose to take it up. Whereas perhaps not all the scholarships were awarded this year, many more offers than the number of scholarships available were made.

One of the problems we have as a board, and this is obviously a continuing problem, is that we are concerned not to overaward. What happens if we make recommendations for more scholarships to be awarded than there are funds?

To amplify the point, I might take note that I come from Queen's University. We get lots of excellent students. In my particular faculty, applied science, our senate sets us a limit of 380 students. It used to be 380 without any plus or minus, and we used to get hauled over the coals if we ended up with 385 students.

Now, fortunately, we have a small band of maybe plus or minus 20, but because of the problem of making awards, some of which are accepted and some of which are not, we always have to make more awards than we have scholarships, assuming that some will not be accepted. Gradually you change the equation you use, the number of excess offers, to fit experience. This is something you tune each year, taking note of what the previous year's acceptance rate was.

Mr. Watson: Okay, but let us go back to the allocation of the scholarships. First of all, how much money are they? Are they the same or do they vary?

Mr. Rajagopal: The total amount? I think last year it was \$7.98 million. It was close to \$8 million.

Mr. Watson: But how much can each student get?

Mr. Rajagopal: For every term of study the student gets \$2,305. Suppose the student goes for two terms, which is the normal academic term, starting in September and ending in April. That student can get \$4,610. If he goes for a full trimester, three terms, he can get three times \$2,305; so he could get \$6,900 or so.

Mr. Watson: In order to get it, does that student make three applications or one application?

Mr. Rajagopal: One application.

Mr. Watson: So if the student is accepted in one application and continues the course right through, then that student collects \$18,000 for his program.

Mr. Rajagopal: No, not \$18,000, but three times \$2,300. So it is about \$6,900 for the first year. That person has to apply again for the next year. One is allowed a maximum of four years, and that person gets cut off from Ontario graduate scholarships at that point.

Mr. Watson: Let us go back on that again because I do not understand it. A person makes an application. I am a student going into--

Mr. Rajagopal: A masters program.

Mr. Watson: --post secondary education.

Mr. Rajagopal: A masters or Ph.D program.

Mr. Watson: A masters or Ph.D program. I make an application. I am accepted as long as I continue my studies in that field. How long is it before I have to make another application?

Mr. Rajagopal: You have to make an application the next academic year. For each academic year only one application is made.

Mr. Watson: Is there any preference given to second-year applications or is there any discrimination, because you have had one last year and you do not get one next year?

Mr. Rajagopal: No.

Dr. Smith: You must also maintain at least a B-plus standing. That is typically at least 75 per cent. It varies from place to place but that is the sort of measure they are after. Normally, you have to be an A student. You have to have something over 80 per cent to get a scholarship.

Mr. Watson: Is the criteria strictly based on academic ability? What are the criteria for the scholarships?

Dr. Smith: The student has to fill in an application form. With that he submits his transcripts, the details of what courses he has taken as an undergraduate and what courses he has done as a graduate student. Frequently, we find students develop as they move through the system. They may have gone into university from school and their learning habits are not very well ordered.

Their first year or two may well be pretty disastrous, but eventually they improve and perhaps they really fly high towards their final year. Then, when they get into graduate studies, they really do fly very high and attain excellent marks and recommendations from the various professors; there are two referees' comments.

The department also has to rank the students. If one department puts up half a dozen students, it would rank these in order of merit. There is no concern taken for financial need since there are other programs in place to take care of this. To be quite specific, all the judgement is made on academic merit to the extent that we have good tools available for us to judge that.

Mr. Watson: Do you as a board divvy these out only to certain universities, or do you see any of the applicants? I am going back to where I started by asking what you do as a board. Do you simply allot them to the various sciences at various universities and then let the universities pick them, or do you actually do the picking?"

Dr. Smith: The board effectively does the picking. Five institutions do their own picking: Brock, Laurentian, Trent, Wilfrid Laurier and a couple of the small, relatively new universities. They do their own picking, but the rest come into one big hopper. They are examined in detail by the various panels, and the panels then make recommendations to the board member responsible for a group of disciplines. He then brings these recommendations to the board. The board would then make recommendations, which ultimately end up in scholarships being offered.

Mr. Eichmanis: Perhaps, just to clarify things, you could explain the difference between an open scholarship and an institutional scholarship as defined by regulation, because that is where the distinction comes in, is it not?

Mr. Rajagopal: Actually, the institutional scholarships date back to 1974 and earlier. These were originally given to preserve a balance among the scholarships offered to all the 15 universities which were participating in the program. That way, no large three, four or five universities could take all the scholarships. They had a base of 10 scholarships for each of the 15 universities to start with. That is to say, 150 scholarships were given as institutional scholarships, and 10, out of a total of 1,000 at that time, were allocated to each of the universities

Subsequently, in 1976 this was reviewed and it was decided, based on the advice given by the Ontario Council on University Affairs, that the number of scholarships should be reduced to 45 and should be available only for five smaller universities. This was because they had the problem of competing with the larger universities, either because they did not have a graduate program or because they found other difficulties in attracting top candidates.

10:40 a.m.

Mr. Eichmanis: As Mr. Watson has indicated, I think perhaps what he does not understand is that the institutional scholarships are the ones decided by the institution itself.

Mr. Watson: There are 45 of these in total?

Mr. Rajagopal: Yes, five institutions, nine scholarships each, for a total of 45.

Mr. Eichmanis: But the rest are open scholarships and these are the ones the board looks at.

Mr. Rajagopal: There are 1,200 scholarships of which, as Dr. Smith says, 45 are institutional scholarships; another 60 go to visa students, who are neither native Canadian citizens nor landed immigrants; and there are 1,095 are open scholarships, which go to students who are picked out from among the applicants. We get about 78,000 applications in a year from students enrolled in the 15 Ontario universities.

Mr. Watson: Visa students can go anywhere?

Mr. Rajagopal: Visa students can go to any of the 15 universities. They are all enrolled in Ontario universities. The scholarships are available only to students enrolled in Ontario universities. The purpose of the program is to promote academic excellence at the graduate level in Ontario universities.

Mr. Watson: In the 45 scholarships allotted to the five universities, how would the total enrolment in the master's and PhD programs of these five universities compare with the total number in the province?

Mr. Rajagopal: They are in a weaker position compared to bigger universities such as the University of Toronto, Queen's, McMaster or the University of Western Ontario. The smaller universities, such as Trent and Brock, do not have master's programs in all the disciplines. Even where they have, they have comparatively less bargaining power to attract good students. That is why they are allowed to have this. I do not have exact data on the number.

Mr. Watson: Does it reasonably represent the number of master's and PhD students that would be there in proportion to the whole population? In other words, does 45/1200s equate to the population in those universities?

Mr. Rajagopal: Some of them do not have a doctoral program; so they have a problem.

Dr. Smith: I do not think we have that number here, but obviously we can find it.

Mr. Rajagopal: We can provide the number.

Dr. Smith: The entire institutional awards program is to be reviewed by the board in March. I have been associated with the board now for two or three years, and the general view of the individuals on the board had been that it was a political decision to establish the various universities. The number of institutional awards is to some extent part of that process.

It has always been presumed in the small amount of checking that has been done, and certainly it has been substantiated, that these institutions give out the awards on the same academic basis; but we expect to go through a full review of the whole process this spring. It is one of the items on the agenda. Mr. Rajagopal has produced information for the board members to review before they get there, and the institutional awards program is to be reviewed thoroughly this spring.

Mr. Watson: I take it from your comments that what you would be expecting to review is the question of whether they should be continued as such.

Dr. Smith: That is a question we should ask all the time.

Mr. Watson: Why do you not make them all institutional awards and give the responsibility to each of the institutions and save getting together to do this?

Dr. Smith: That is something we have not discussed. Most of the individuals on the board are professors from other universities, and they tend to be very pleased with the NSERC and SSHRC system of awards, which are national awards. Even though you are perhaps a small university--we at Queen's sometimes tend to look at University of Toronto as a great big place with huge facilities and so close to the government that pours all the money in. We have to fight a little harder.

I suppose it depends on how fair the initial cut is. As you may well know, the formula for financing universities tends to lead to quite a lot of debate within some of them. To the extent it has discussed it, and it would have been only in a passing manner, the board is happy at present with an open system. However, it is something we will examine.

Mr. Watson: However, with respect to what influence the board members have on allocations to the various universities, do you have an undue influence in seeing that Queen's gets more than its share? That is really a two-part question.

Dr. Smith: I am told I am as impartial a chairman as it would be possible to find anywhere. Fortunately, Queen's has a very good chance. In all seriousness, the chairman makes a report, and this is then reviewed by the ministry and by the council of Ontario graduate schools. There is some interplay between the three bodies, and as a result of various things, some of our recommendations are approved and some are not, or at least some are put into practice.

For instance, until relatively recently we had to break landed immigrants into two groups, L-1s and L-2s. The L-1s had to be treated in the same way as visa students. An L-1 is someone who had been a landed immigrant for less than one year at the time he applied. We have never seen any reason for this, and we always recommended against it. Now we treat all landed immigrants and Canadians in exactly the same way, however long they have been here.

That is one recommendation that was in put into place, for some reason which we presume was perhaps political. After a number of years, our recommendation was received and issued as policy from the ministry.

Mr. Watson: This leads me to one question I would like to ask: In terms of the authority under which you operate, do you feel that legislation or some of the guidelines should be changed, and what changes, from your point of view, would you like to see in the operation of your board?

You have already mentioned one case in which you apparently made the recommendation for a change and finally it was accepted. Do you have any others that maybe could be effected simply under a direction or may even require legislative changes?

Dr. Smith: One of our concerns is that we should be charged with husbanding, if we can, the resources to support scholarships. If you look at our operation simply in that way,

then the 60 visa student allocation is nonsense. Canadian universities can attract the cream of many other countries. Certainly these people go back, since they come here as visa students and they must leave. However, from the point of view of supporting scholarships and having these people work in the universities and contributing to the general academic wellbeing of the whole system, we generally feel that the 60 is inadequate.

10:50 a.m.

We would like to see more scholarships in general. Obviously to some extent this has political overtones, and we recognize the various constraints. If we are concerned with supporting scholarships, there are a number of panels for each discipline group, with maybe eight subjects within a discipline. All the visa students are examined by one or two panels, depending on the numbers.

We try to give each group of three professors about 80 to 100 dossiers or applications to examine. In order that there be some consistency in the examination process, all the visa students might be examined by one panel in, say, English, history and geography. Then it would make recommendations for the small number that is allocated.

Mr. Watson: What are you recommending happen to the ones who are designated visa?

Dr. Smith: We would like to see the proportion of visa students increased.

Mr. Watson: Visa students are people who come from other countries to study here and then go back to other countries.

Dr. Smith: I can only speak from my observations of engineering disciplines. Many of them are absolutely superb students. Going back to my earlier point, if our job is to try to support academic excellence in university research in the province, we are only doing a partial job with respect to visa students.

Obviously, we would like to do what is possible to support all the landed immigrants and Canadian students, but the academic calibre of the people in the division between "received a scholarship" and "did not receive a scholarship" is higher for the visa students than for the general open group of Canadians and landed immigrants. How much higher it is depends on the particular disciplines.

It is quite different in engineering. In applied science at Queen's University in particular we have approximately 380 students in each year. As to electrical engineering, Hong Kong students often tend to go for the high-tech things. There are a great bunch of people with Hong Kong background in the first 20 places in the faculty.

Mr. Watson: The obvious political question is, why should we take Ontario tax dollars to support people who are only

here on visas, educate them and send them back home to build things they then send over here to take jobs away from our people?

Dr. Smith: I get involved with the International Development Research Centre and the Canadian International Development Agency in Ottawa. I am sent to other countries to try to help them improve their research facilities and generally to make use of Canadian money in collaborative research efforts to upgrade them.

In a variety of political arenas, we are deliberately attempting to help other countries to become better at doing many of the things we do. The board does not attempt to get into the political arena. As far as I am concerned, it is not my job to decide on the politics. We attempt to act on the instructions we receive from the ministry and in as well judged a way as possible.

There are many first-class students. I am the head of the department. It is excellent to have somebody who is thoroughly first-class mixing in with all the rest of the students, the regular Canadian students, many B-plus, A and A-plus students. It is a catalyst. I can quote examples of what that sort of thing does, but I am sure many of you have experience of it.

I am not trying to make a pitch that we should have the whole thing open. We recognize there is a need to restrict the money that goes to visa students for the very reasons you have cited. However, when you look at the talent that is requesting support, then we have concerns that perhaps 60 is not the right number.

Mr. Watson: I know you said the financial ability to pay has nothing to do with your allotment of these, but would these visa students be fewer in number if the scholarships were not awarded to them? Maybe you would rather not answer, because you stated previously that the ability to pay has nothing to do with the award.

The argument I get into at all levels concerns the people who come here from-offshore who seem to have lots of money. If my kids are going to university and I am making them pay their way through, and if when they want a ride to a football game or something they ride in the new car that the fellow from offshore has, that hurts.

Dr. Smith: Oh, yes. The house next to where I live is owned by the son of somebody from Hong Kong, and the man drives a Saab Turbo.

Mr. Watson: And you are quite prepared to give him \$4,000 a year of our money because he happens to be a good student.

Dr. Smith: Wait a minute. It may well end up that he would get it. I have already said that we do not take need into account. If we put need in our awarding equation, then presumably he and many other students would not get it.

I happen to have an Indian student who is superb. He is being well funded on a very valuable Queen's scholarship. He does

not apply to the Ontario graduate scholarship program because he gets these things. This young man, to the extent that I have information on him, has told me that he has not taken a penny from his family because his family in India is very poor. He came to me from an Indian university; he was a lecturer there. He has earned, by way of scholarship, every penny he has received.

Certainly we have the man next door who is driving a Saab, and we have this fellow who has a wife and three children here and who is existing on stipends that are not very different from those that many other students straight out of their bachelor's programs get; so we see the other side of the coin. I am sure he intends to go back and try to contribute to his community, because he recognizes that he has been very fortunate.

Once we put need into it, we are in a different ball game. We are not in that ball game, and I do not think we should be in that ball game.

Mr. Watson: That was my next question. Do you think you should be in that ball game?

Dr. Smith: No. We are not equipped to be in that ball game. We know something about the academic process, and we know something about adjudicating between the claims of one individual and the next individual; but we are not at all equipped to get into the sociological problems, and I hope the board will never be asked to do that.

Mr. Watson: Okay. I will pass to somebody else.

11 a.m.

Mr. Hennessy: I am just a little concerned. You mention that it is not a political decision. The decision will rest with the people here. We will have local people, people from Ontario and from different provinces saying: "You are giving more scholarships to people who are coming over here and you are not taking care of your own people. Our own taxpayers are not getting the benefit of it."

I fail to see the wisdom of your reasoning concerning these people from out of the country. We have enough unemployment here now without giving scholarships to people who may not even need them. The unfortunate part of it is that the people who need to come to Canada and relocate do not get to do so; it is the people with a lot of money who have the influence who get to come to Canada. It is the wealthy who are gaining by this. In the case of our own local people, perhaps a person is working and supporting a youngster to go to university or college who has the possibility of getting a scholarship, but they are given to out-of-country people.

I find it very difficult when to some extent my tax dollars are going to support somebody from another country. I cannot see your reasoning. You are very wise in saying that it is a political decision. Yes. You make the balls and we will throw them, and they will throw them back at us. Probably the same people you represent

will be the first to criticize us for taking care of people from out of the country while our own local people are not getting the benefits of receiving scholarships when they so justly need them. I find that difficult to digest.

Dr. Smith: I am the head of metallurgical engineering at Queen's University. We would be happy to have any good Canadian student apply to us. I think this is true of all the engineering departments. We have a variety of sources from which we can get money--the Board of Industrial Leadership and Development and the programs flowing from BILD where, for every \$2 we can raise in association with industry for research, we get \$1 from the province. There are a variety of other things. There are the university interface collaborative grants from the federal government. The applied science departments end up with research dollars coming in which can be used to train students and also be applied to research assistants, research fellows and so on.

I can make the claim that in my department no good Canadian student is ever turned away. We obviously have an acceptance level. If the student demonstrates he has the academic ability and the interest in the various programs we offer, then we will be pleased to take him on.

I do not know what the situation is in history at Guelph, for instance. I would presume in those areas there is perhaps less money around, other than from the major scholarships, to support these. But if you look at our list, you will find there are also very few visa students.

I recognize your concern. We all share that concern. We do know, for instance, that in Ontario we have formidable fees for visa students. The fee is something in excess of \$6,000 for a visa student per year compared with less than \$2,000 for a regular Canadian student. So they pay quite a significant penalty to get into the system. Whatever scholarship they get, they still have to pay those things.

Other provinces--British Columbia, for instance--do not have this. The visa students, the people from outside Canada and the people from inside Canada are treated in exactly the same way. I presume in BC there is an equivalent scholarship program to the that of the Ontario Graduate Scholarship Selection Board. I do not know the details, but I presume most of the provinces have something like this in place. To the extent they do not differentiate in fees, the visa student does not have a harder road to hack.

I am not trying to shrug off the importance of your comment. We are all concerned--

Mr. Hennessy: You are getting me confused. You keep on talking. You are doing a great job for yourself.

Dr. Smith: I am sorry.

Interjection: Stop arguing, Mickey.

Mr. Hennessy: You mentioned you had no trouble getting money from different areas. That is not what I read or hear through the media, which is that there is no money allowed. You say you have no trouble getting money.

If a person can pay \$6,000 to enrol in a school, surely to God he has the money to come over here. It is not a peasant or a coolie who is going to be able to put up that kind of money; \$6,000 is a lifetime's saving. Maybe he will never make that kind of money. It is only the affluent or rich people who can afford to come here for an education.

For you to say you are going to try to give them more scholarships and take them off the Canadian students, I find that very difficult to digest, regardless of how you are going around it.

Dr. Smith: May I correct something? I was not aware that I said it was easy to get money. If I did say that, I would retract that. I have said there are sources of funding available to the people in science and engineering that perhaps are not available for people in arts. It is always difficult to get research money; you have to put up appropriate research proposals and so on.

We recognize the reason there is a limit on the support of visa students. We are concerned that 60 may not be the right number. It may well be, from your vantage point, that it is too large a number. From our vantage point, attempting to support the best scholarship in the university--that is really what universities are about--we would like to see that number increased. What it is increased by is something which obviously the ministry and others will wrestle with.

There is a number now, 60; somewhere along the line a decision has been made to support visa students, and 60 has been selected as the number. Presumably--

Mr. Charlton: On that point, just so it is clear to everybody, is the number of 60 scholarships for visa students set by your board or by the ministry?

Mr. Rajagopal: It is set by the ministry. It is part of the Ontario graduate scholarship regulations that they support five per cent of the top 1,200 scholarships. It is set in the regulations.

Mr. Charlton: If members have an argument about that issue, it is an argument with the ministry, not with your board?

Dr. Smith: Not with us, no.

Mr. Hennessy: Let me clarify that. If this committee makes a recommendation to that effect, the minister may be convinced or swayed to some extent that this committee is 100 per cent in favour of it. With all due respect, if the ball lands back in this court, it becomes a political decision. The same people sitting here today would be the first ones to get up in the House

and ask, "Why are so many scholarships being given to people from out of the country when our own people are starving?" and all this stuff. Therefore, it works two ways.

If it is going to be a political decision, I want to be on the record so that if the minister does happen to read this he will know I am not in favour of it, rightly or wrongly. I am elected by people here. You get the majority of those people, and I am not criticizing them, going back to their own countries and we lose all that expertise we could have in Canada; therefore, the Canadian people, the bigger percentage of them, would probably stay in Canada.

What I am concerned about is that it is a recommendation from this committee, and if the minister does not hear any dissenting viewpoints, he will assume the committee is in favour of it and thinks it is a great idea. I do not think it is a great idea.

11:10 a.m.

Mr. Breaugh: To be fair, at this level of scholarships, in whatever jurisdiction, an attempt is usually made to provide for excellence from anywhere; there is attempt made to build into the program people who are not residents of that jurisdiction.

My own daughter is one of three kids from our area who are on scholarships at the University of Texas. The basis of it all is that they are looking for excellence wherever they can find it in the world. An attempt is made, for a variety of what I consider to be extremely valid reasons, to provide those scholarships on the basis of excellence. They get them and work them into the program.

I believe there is a great advantage in having these students here at our schools. They have a great deal to offer to the schools and the other students. It is part of a moral obligation on the part of Ontario to open up our universities to foreign students. The fact that 16 scholarships are awarded in a year seems a minimal acknowledgement of that obligation.

At this level of education, I cannot quibble with the fact that students from other countries are participating in the program. I cannot argue with it when I know full well students from Ontario are taking advantage of scholarships in other countries. I would be as mad as hell if somebody said, "Your kid cannot go to the University of Texas because she is from Ontario."

I would have a long argument about whether the three kids from my area are there because they are residents of Oshawa or because they do something particularly well. They are there because they earned it. From what this gentleman says, I take it these young people are at Ontario universities under our scholarships not because they are token persons from other countries, but because they excel at what they do and have earned them.

Mr. Charlton: Perhaps we can take this academic excellence discussion a step further so it becomes clear. At the

outset, you said the purpose of the scholarships is to promote academic excellence at our universities, and that the allocation of a number of those scholarships to visa students is for the purpose of attracting very high quality students from abroad in an effort to broaden, as far as you can, the excellence, the expertise and the breadth of experience at programs in our universities, in order to broaden the scope of academic discussion and so on. That is basically what we are talking about.

Dr. Smith: May I comment on that? Perhaps I can give an example. There are about 25 graduate students in the department I head at Queen's University. For a number of years I urged our students to do something with the room they used as a common room, but nothing really happened. I offered to provide some small sum from the trust fund we have to help re-equip the place, to make it a room for something other than drinking a cup of coffee and talking about hockey, football or whatever.

Finally, this year a student from Nigeria who came to us on a scholarship from his own government took the ball and ran with it, or took the puck and skated with it, and now they have an excellent facility. All the other students are benefiting significantly from it. That is just a trivial example. Those of us who spend a good chunk of our lives at universities thoroughly enjoy having a mix of people from all sorts of countries.

We would like more first-class Canadian students, without any doubt, but what we really like at the university are bright students. We have a degree convocation, a degree ceremony at Queen's and we still have a prayer before the degrees are awarded. The university chaplain makes the prayer that the university is composed of co-learners, the professors and the students, and we value that.

Mr. Charlton: Let us talk about your programs and put the whole thing into perspective. I think you said you had 380 students in your program. How many of those would be visa students?

Dr. Smith: Those are 300 undergraduates, not graduate students.

Mr. Charlton: Okay. How many graduate students do you have in the program?

Dr. Smith: Queen's has a total university population of between 10,500 and 11,000. Of those, about 1,200 to 1,500--it varies--are graduate students.

Mr. Charlton: Let us take the 1,500.

Dr. Smith: I believe the number of visa students in the entire university is something less than 20 per cent. It varies from place to place. In some universities, the graduate population may even approach 50 per cent. In some departments, in other places, it may well run in excess of 50 per cent.

The universities are very aware of these things, and the federal government uses various means of bringing pressure to take

note of your concern. For instance, most of the professors in science and engineering receive operating grants to help them in their research work. Only a certain proportion of those funds--I think it is 30 per cent total for the universities--can go to visa students. There was one period of time when they cut out all visa support from operating grants. More recently, they brought it in.

We are pleased when the first-class visa student comes with us, hopefully benefits significantly, as we do from having the student there, and then goes back to his country. Many of those students ultimately apply to come back to Canada, and many of them are received into Canada and become first-class members of society.

The whole rationale of aid to the developing world is broad, very involved and has all sorts of political and commercial overtones.

Mr. Charlton: Can we go back for a few moments to the open scholarships? I think you said that in general the people from the universities are happy with the way the open scholarships are dealt with. Have there been any complaints from the universities that do not have any institutional scholarships about not receiving a fair share?

Dr. Smith: I am not aware of any of these. We were talking earlier about some of the things we might look at during our March meeting. I have served on the admissions committee at Queen's for undergraduates. One of the statistics we get fed was the number of Ontario scholars who go to various institutions. Something like 65 per cent of the intake at Queen's is Ontario scholars. That is the highest proportion in the province. Only eight per cent, in the particular year for which I saw these statistics, go to Brock.

We are talking about undergraduate studies. Often the research program, the undergraduate program and the relative prominence of the individuals in it may well be similar. I do not have that information; we are intending to try to get this together so that we have a much better feel for it and, therefore, can make some recommendations on the institutional awards subprogram.

Mr. Breaugh: That is just because these people want to go to the finest university in the country, though. There is nothing astounding about all these Ontario scholars wanting to go to Queen's; they just want to go to the best university in Canada, that is all.

Interjection: Are you an alumnus or something?

Mr. Breaugh: How did you know?

11:20 a.m.

Dr. Smith: To the extent that eight per cent in that particular year went to Brock, then presumably the institutional awards were the response in graduate studies to try perhaps to redress that sort of imbalance.

Mr. Breaugh: I just have one area about which I am somewhat concerned that I want to explore. This program is a good one, but I would very much like to see it expanded. Is there any possibility of an expansion of this program in the foreseeable future? Is there any push on to do that?

Mr. Rajagopal: I guess we have tried to attack the question on two fronts in the last few years. One is the number of scholarships and the other is the value of scholarships.

The number of scholarships now seems to be 1,200; it was originally 1,000. If you take an application intake of all the 8,000 students, almost one out of six students who apply is able to get a scholarship right now.

Taking the program itself as one which is intended to promote academic excellence at a very high undergraduate level, I do not know whether the number itself would be a major problem with respect to 1,200. Probably there has been a lot of comment about increasing the value of the scholarships. It has been said that too often the value of the scholarship, which is \$2,305 per term, is quite low. This is still comparatively less than other scholarships.

We have been thinking on and off about how to increase the limit. In the last three or four years we have been more or less tied down to the five per cent of the guidelines and we have not been able to increase it very much.

Again, finance always seems to be a problem. At this very moment, I guess, the advisory body for the ministry, the Ontario Council on University Affairs is also making a thorough review of the scholarship program in order to see exactly how it can be revamped and increased in its scope. We hope to hear from the Ontario Council on University Affairs within the next few months. At that point, we have to review exactly whether more money is available and, if so, how we can increase the richness and diversity of the program.

Mr. Breaugh: My concern is twofold. One, I have some concerns for those people who do get these scholarships in that we are probably not meeting their full expenses. I do not suppose it is a great hardship when one looks at what another student has to go through, but it is a bit of a problem in that it is not addressing itself to the actual costs that are involved, but it is an award of money, for which I am sure everybody is grateful, but it does not quite cover the expenditures.

The second problem that would concern me somewhat is that I would be anxious to retain these students here in Ontario and Canada. I am aware that we are in competition for these students with other jurisdictions which offer much better programs with respect to scholarships, funding and even facilities.

I am aware that the University of Texas, for example, set out a few years ago to upgrade its academic standards. The first tool they used was academic scholarships, much as they had been

using athletic scholarships for years. They went at it very aggressively at a number of levels, one of which was providing full scholarships for students who had academic excellence. In a short period they managed to move that university into--I think it is now ranked eighth in the United States. They simply decided what they wanted to do and in typical American fashion aggressively went after it and upgraded annually.

We are in a certain sense competing with that type of approach, and I do not think we are competing very well. I would be interested to share your views on that.

Dr. Smith: The university requires to have teaching assistants. They are called different things in different places, but these are essentially people who in sciences take charge of laboratories and perhaps mark problem sheets and this sort of thing. Again, the practice varies from one place to another, but in my faculty these students are paid a minimum of, I think, \$15 an hour. Many groups are now unionized, and that is a figure which varies from place to place.

The net result of all that is that students, particularly good students, whom professors would like to be their teaching assistants, can expect to receive somewhere between \$2,000 and \$3,000 in addition to their scholarship stipend. They end up with something like \$9,000 or maybe even \$10,000. There is a limit to the number of hours they are allowed to expend in this sort of activity, but you would want the first-class student in your classes.

I think some of your fears are allayed because there is a supplement that tends to arise from the department. The very best students may well choose not to have that when they are really pressed and want to get their dissertations finished or something. Then they would elect to take only the scholarship.

Mr. Breaugh: I would still maintain that comparing what is available in Ontario to what is available in other jurisdictions, there are a lot more attractive programs, better financing and more-possibility-elsewhere than there is here in Ontario. If I were one of these students and was looking at the offer of this kind of financial support here in Ontario as opposed to what might be available in Texas or California or even in England, the prospects of going somewhere else would be extremely attractive.

Dr. Smith: There are a few Nobel laureates in Canadian universities.

Mr. Breaugh: Yes.

Dr. Smith: It may well be the way you become one is to some extent political, but--

Mr. Breaugh: Yes. I think the financing of universities in other jurisdictions is maybe not quite as stable as it is here, but then if you look at what any large American university has as its resources, you see they are really quite phenomenal.

I had the chance to visit the University of Texas at Austin and I was just overawed by the kind of money which that university has at its disposal and how it goes about obtaining it. It does not matter whether it is a football team or the world's greatest intellectual, they have financial resources which would just make our universities drool.

Dr. Smith: Queen's puts the screws on its graduates, its alumni, as you no doubt know, but to a much lesser extent than other people. We tend to put it on more than many other Canadian universities.

Mr. Breaugh: I noticed.

Dr. Smith: We tend not to do it quite so well.

These days, certainly, in engineering there is a great emphasis on high tech. There is a microelectronics institute in California and some people like Bell Northern join it. It is \$1 million up front. It is closed now; they will not take any more people. You also pay an annual fee.

It is an excellent financial engine. It drives itself and generates all sorts of benefits.

Mr. Breaugh: How would you rank us in that field of endeavour? Are we at least competitive in attracting these people and keeping them here?

Dr. Smith: In some areas we are. Do you mean in, say, microelectronics?

Mr. Breaugh: Yes.

Dr. Smith: As a result of a Queen's initiative, the microelectronics centre was established--VLSI, very large scale integration--which is a co-ordinating facility for all the Canadian universities. There is a lot of University of Toronto input into it as well. All the universities collaborate through this microelectronic centre. It does quite a lot of design work, but it gets the software to do it from Stanford.

In some areas we lead the world, but they tend to be a much smaller number than the Americans. Then they are 10 times bigger and they seem to have ways of--everybody from MIT has an MIT chair. You do not have a Queen's chair--I do not know whether there is a Queen's chair; you may have a Queen's clock.

Mr. Breaugh: I have an old scarf.

11:30 a.m.

Mr. Chairman: May I play devil's advocate for a moment? You said earlier that the main criterion or the one criterion in giving these scholarships was academic excellence. Let us assume that all of the applicants have a couple of nice letters from their professors saying what good boys they are, how bright they

are, their future is great and so on. Why would you not just take these 6,600, feed the details into a computer and pick them off the computer? Dispense with your board and at the end let the computer spit out the 1,000 or 1,200 successful ones to the minister.

Dr. Smith: I suppose that could well be a better system, if we were able to quantify objectively the various inputs on the recommendations and the departmental placing, all of these things.

For instance, it may well be that the departmental ranking of students may not line up with the cumes--their graduate final mark or undergraduate final mark--since that tends often to be something that arises mechanically. One would hope that the professors who are on the panels do use their skill at taking note of these various things and putting it into their selection procedure.

Mr. Chairman: Therefore, there is more than just academic excellence or marks; there is a subjective judgement made by these various panels.

Dr. Smith: The subjectivity is associated with the interpretation of the various bits of data they have. As I mentioned, it could well be that of two students, one who is an undergraduate and has just graduated and might well have got, say, 86 per cent while the other has 83 per cent, the department may well have ranked the 83 per cent fellow higher than the 86 per cent man. You would need to have some way of taking note of that.

Sure, you could write an algorithm or an equation which could build that in. If you are going to use letters of reference, and we believe you should, then it is very difficult to quantify those.

In principle, we could. We could rank it between one and 25, or something, and then we could feed it all through. Sure, but you still need the panels to make that ranking.

The board has been very concerned that at all times the members, either the panel members or the panel chairman or the board members make all the academic decisions. We deliberately attempt to avoid placing the burden of making academic decisions on any of the staff at the secretariat who service it.

In principle, yes, but you require somewhere to take that data and quantify it. If you look at the procedures, as an individual professor serving on some panel, I would get these scripts and I would then suggest that we place them into five piles, starting with the best fifth and then the second best, and so on. Then we ascribe numbers to these and add up the numbers.

If I were the chairman, I would compare Joe Bloggs or Bill Smith or whatever with what the others would rank that individual at. If there is a difference of three in what you say this fellow is worth and what I say this fellow is worth in the academic scale, then we will have another good look at him or her.

We try to take all the data we have and finally put it into a number and then from that number make a proposal. As chairman, I would already have a number target of successfuls and a target of reversions. One of the things I am responsible for is deciding on those targets and I do it by taking note of the proportion of acceptances in the past. One of the things we have done this year is to increase the number of acceptances so that, even though we have something like 1,100 open scholarships to give out, we are accepting 1,400.

We only hope there is not going to be a hiccup in whatever it is that causes people to accept or not to accept, because I do not know what the devil happens if the ministry runs out of money. One of the things we obviously have to be very concerned about is not to put the ministry in an invidious position.

Mr. Charlton: On the process of ranking, when you look at the files you have on each of the students, how much weight does the board put on the level at which a student participates with others, i.e., if two people who are ranked relatively closely and one is described as a loner and the other participates well with other students.

Dr. Smith: The department would take note of that. The head of the department has to fill in ranking sheets for the people for his department and that sort of thing would no doubt be considered. If I had two people ranked together and there was some comment that they were absolutely equal and therefore were ranked equal, but one tended to be a loner and the other tended to take part in active discussions in the group, with no equivocation at all I would go for the one who takes part in active discussions. If you look at the way ideas arise, they do not arise in isolation.

Mr. Charlton: That is why I asked the question.

Dr. Smith: I am sure my colleagues feel much the same.

Mr. Edighoffer: I understand that, of the recommendations you make each year, you recommend more because you naturally have students who do not accept. What numbers are accepted by the minister--100 per cent, 99 per cent? I understand you are an advisory body. Does the minister accept all your recommendations?

Mr. Rajagopal: Most of the recommendations are accepted by the ministry, subject to any fiscal or financial constraints that may pertain to the ministry at the time; for example, recommending something such as the abolishment of this second category of landed immigrants, of cutting down or increasing, anything that does not involve any major policy decision. There is no problem about a person being accepted. However, we were talking about visa students today. Those of a major nature require much serious discussion. The minister may choose to accept or may say, "We cannot do it at this time."

By and large, I would say the recommendations that come from the chairman are all accepted. Last year Dr. Mothersill was the chairman. The board's recommendations, the recommendations he made that we are talking about were all accepted.

Dr. Smith: On the L-1 and the L-2, that recommendation, there was the scrapping of the landed immigrants who had been here less than a year at the time of application. They were considered in the same group as visa students. There was obviously some reason for having that sort of grouping earlier. The recommendation to scrap that group was made by the board for a number of years. Eventually, that became the policy of the ministry. Presumably, there was some rationale for having it there in the first instance in the same way as there is with the 16.

11:40 a.m.

Mr. Edighoffer: Looking over this report of the chairman for the 1984-85 competition, there are a number of recommendations. I wonder whether you have any comments on any of those recommendations. It would be helpful for us as a committee.

Dr. Smith: The first one has been accepted. Number 2: It is a chore looking at a mass of applications, and it would be very nice if more professors would come forward to do it. The same names often appear year after year. These are people who consider this is one of the activities on which they are prepared to put in some real time, but the secretariat often is a little pressed to get the appropriate mix of available expertise.

Mr. Edighoffer: Is that why number 7 is there? Are we considering making it compulsory?

Dr. Smith: Any of you who have taught at universities will know March tends to be a very busy month. At Queen's the lectures dry up in the first week of April; so March tends to be very busy. You are trying to make up for all the time that you or the students have perhaps lost. There has been a general wish of most panel chairmen not to be present.

This year it may well be that the humanities group will choose to get all its people together before the board meeting. We will revisit that question as part of our deliberations after the competition. I personally think it is good to have the chairman there since every application will have been reviewed by the people who are available in the hotel at the time we make the final selection. Somebody has looked at pretty well every application, and if only the board members are there, they go along with the recommendation of whoever chaired the particular panel.

We believe that we have a good system and that this is not an unreasonable thing to do, but nevertheless various things pop up and it would perhaps be nice to revisit it. It takes one or two days out of an individual's busiest time.

Mr. Edighoffer: I was wondering about number 5.

Dr. Smith: We have tried to simplify the wording to make sure all sections are consistent. We spent some time looking at that.

Mr. Rajagopal: That has been revamped.

Mr. Edighoffer: It has been revamped; I was not aware of it. If there were any further comments on any of these, it would be helpful to us.

Mr. Chairman: May I play devil's advocate again? Last week we had the Geoscience Research Review Committee in front of us, and I can remember that last September we had the Ontario International Corp. in front of us. The committee got itself somewhat hung up on value for dollar, to put it bluntly. Last week we became somewhat concerned with value for dollar as a yardstick. If one were to get a yardstick, what does your \$9 million in scholarships do to put chickens in every pot in the Ontario economy?

Dr. Smith: I once turned up for a chair in Britain and was asked to what extent my research had anything to do with the price of a pound of potatoes.

Mr. Chairman: Fair enough. That is very close, except we grow more poultry in Oxford than we do potatoes.

Dr. Smith: Obviously, it is a difficult question to answer. I do not know too much about the price of milk, but I do know a little bit about the mining industry in Canada, not that it is the area I work in. I came to be involved in solid state more than in these other things.

I was at a minerals outlook conference that the Department of Energy, Mines and Resources put on last fall. There was a general mood at that meeting of getting into the bunker and shoring up the exit because we are going to be assaulted from all sides.

In other countries, we tend to have relatively low-grade ores, except perhaps in ore bodies that we have not discovered yet or are a long way from where we want to use them. If you have low-grade ores, you are required to expend an enormous amount of energy to end up with a metal. Assuming there is a market for that metal, it means your metals cost that much more. In places like Zambia and Australia, they have mountains that are 65 per cent copper, iron and so on; they have a much greater ability to feed the world's desire for raw materials.

It seems to be obvious that a large component of Canada making its way in what remains of this century and the next has to do with ingenuity--making a better mousetrap, making a cheaper mousetrap with the same design. That is so often what the steel industry is about. All these things require new people, new minds to grapple with things.

I am convinced that whatever you spend on this--be it \$9 million, \$10 million, \$12 million or whatever--for anybody who has the academic ability to go on to graduate studies, everything should be done to help him do it.

One of the delightful things about being a professor is watching people develop from when they first come in your door as undergraduates and then go out as graduates, then taking people

and watching them develop from being relatively inexperienced, wet behind the ears, whatever, when they first come into the graduate school and move through the MSc and the PhD, especially if they have done it in a group school where they have had to defend what they are doing all the way through. They have not been attacked but encouraged to interact with each other, defend their positions, make statements, expect to be challenged and be prepared to rebut the challenges, or if the challenge is sustained, change their argument or direction.

11:50 a.m.

I am sure Canada's future is tied up with its young people. It is tied up with all its young people--the ones who go to colleges of applied arts and technology and the ones who do not. All these people are extremely important. The ones who are going to shape the future are the bright people. One of the ways of helping the bright people who want to take the university route to success is to help them with this sort of program.

Mr. Charlton: One of the problems with the engineer making the better mousetrap is that the geneticist is inevitably making a better mouse as well.

Back to the selection process. What other kinds of things do you look at in addition to the academic standing and ranking that a student gets? For example, do you look at other things those students do, extracurricular things in the university and perhaps extracurricular things in the community as well, just with respect to the breadth of experience that student can bring to the university?

Dr. Smith: So often that sort of thing is reflected in the comments of the professors who know the student. So often the brightest students tend to be introverted, so there tends not to be too much of that stuff. You know jolly well that those bright students in the right atmosphere will provide some of the new thoughts.

In general, we would take note of those activities. When I first arrived at Queen's, I used to take part in a prison visiting scheme until they had the riot and stopped that. I suspect that sort of activity would not go too far to change the standing of the individual in the classification.

Obviously, it is an individual thing. The board takes the comments or recommendations from the individual panels. We are all human; we are not automatons that can just end up with set numbers; so I presume the individuals will consider those things, more or less, depending probably on their own social interaction.

In general, as a professor and head of a department, I look for that sort of thing.

Mr. Charlton: So to some extent it does play a role?

Dr. Smith: I am sure it plays a role. I would think it would come in very clearly in the recommendation from the

professors, since they are encouraged to not only tick a few boxes on where these people rank among all the students they have--that sort of thing--but also add additional comments, and there is a big space for that. The comment I would make is that the man or woman makes a significant contribution to the life of the department, which I think is paramount in a good school.

Mr. Chairman: Any other questions?

Mr. Edighoffer: When we were going through this, someone asked why there was a difference, even though the costs of the board are minimal. What was the difference when back in 1982 it was \$43,000 and last year it was \$28,000? What was the reason for that? Can we expect a large increase in next year?

Mr. Rajagopal: No, beyond the fact that the expenses have been kept down--especially what Dr. Smith was talking about, the meeting in March. A meeting of that nature now is made optional; therefore, there will be less money spent on services.

I think it has solidified at the current level of somewhere in the neighbourhood of \$27,000 to \$28,000. We come back to the total expenditure of \$8 million in the fall program moneys.

The services could vary, depending upon how the meetings are arranged. We have now adopted what is called a conference call to get the professors together. We have arranged conference calls so they can exchange views, because each panel consists of three members. We have always tried to find ways and means of reducing the expenditure level.

Mr. Chairman: Fine. That appears to be all the questions. I believe Dr. Smith has a plane to catch. Am I not correct?

Dr. Smith: I have a train to catch.

Mr. Chairman: You have a train to catch. All right. You will certainly make it by one o'clock. I presume the snow is not so deep it is going to stop the trains. Thank you very much for appearing before us this morning.

If there is nothing more, committee members, we will meet this afternoon at two o'clock to review the drainage tribunal. Mr. Watson and Mr. Villeneuve will be particularly interested in seeing how drainage in southern Ontario is doing.

The committee recessed at 11:55 a.m.

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STANDING COMMITTEE ON PROCEDURAL AFFAIRS

REVIEW OF AGENCIES, BOARDS AND COMMISSIONS:
ONTARIO DRAINAGE TRIBUNAL

TUESDAY, FEBRUARY 12, 1985

Afternoon sitting



STANDING COMMITTEE ON PROCEDURAL AFFAIRS

CHAIRMAN: Treleaven, R. L. (Oxford PC)
VICE-CHAIRMAN: Watson, A. N. (Chatham-Kent PC)
Breaugh, M. J. (Oshawa NDP)
Charlton, B. A. (Hamilton Mountain NDP)
Cureatz, S. L., (Durham East PC)
Edighoffer, H. A. (Perth L)
Kells, M. C. (Humber PC)
Mancini, R. (Essex South L)
McNeil, R. K. (Elgin PC)
Miller, G. I. (Haldimand-Norfolk L)
Rotenberg, D. (Wilson Heights PC)
Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Substitution:

Hennessy, M. (Fort William PC) for Mr. Kells

Clerk: Forsyth, S.

Staff:

Eichmanis, J., Research Officer, Legislative Research Service

From the Ministry of Agriculture and Food:

Ediger, H., Executive Director, Foodland Preservation and
Improvement Division

Spencer, V. I. D., Director, Capital Improvements Branch

Witness:

O'Brien, D. A., Chairman, Ontario Drainage Tribunal

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON PROCEDURAL AFFAIRS

Tuesday, February 12, 1985

The committee resumed at 2:05 p.m. in room 228.

AGENCIES, BOARDS AND COMMISSIONS
(continued)
ONTARIO DRAINAGE TRIBUNAL

Mr. Chairman: We have in front of us this afternoon the Ontario Drainage Tribunal, Mr. Delbert O'Brien, chairman. Mr. Henry Ediger is here from the Ministry of Agriculture and Food. Does either of you have an opening statement, oral or written?

Mr. O'Brien: Yes, Mr. Chairman, I have a few remarks.

Mr. Chairman: Would you proceed?

Mr. O'Brien: Mr. Chairman, I am pleased to be here this afternoon to discuss drainage. To many mainstream residents of this province drainage might not be a major interest, but, as you know, it is of great interest to many of our rural residents. Occasionally of late, drainage has even reached some of the major newspapers in the country. It is becoming the subject of some controversy in parts of the province.

Some of you may have been involved in the committee of this House that investigated drainage in depth. The result was the Drainage Act, 1975. Included in that act was the creation of the drainage tribunal. That act was proclaimed in April 1976 and the tribunal was established in approximately 1977 over a number of months.

The drainage tribunal went to work. Since that time we have conducted approximately 600 hearings across Ontario and we have another 50 or 60 hearings scheduled. We recall the admonition of the committee recommending that there be easy access to the tribunal for farmers and residents affected by drainage, and we have tried to follow that rule. We have attempted to have the proper perception with the parties involved in hearings.

With respect to easy access, as you are well aware, we have always held our hearings in the local municipality. On occasion, this has meant holding hearings beside the local grader in the township garage. At the opposite extreme, there have been occasions when we have dealt with a major drain costing \$2 million or \$3 million in a hearing that lasted more than two weeks and involving five or six solicitors representing different parties.

We have a broad cross-section of the types of hearings we have to conduct and we attempt to adjust our procedure to the occasion. In other words, we try to assure farmers that they do not need lawyers to appear before us. We try to maintain a very simple procedure. All that is required to appear before us is to

sign a note or a letter indicating the need for an appeal, and we will come to the area. Lawyers appear in approximately 40 to 50 per cent of the hearings, but there is no need to have legal counsel present.

As you are aware, the drainage tribunal has eight members. The vice-chairman is an experienced drainage engineer. He sits at all hearings with me, the chairman, and two other members, both farmers. So at any hearing there are always two farmers and two professionals, and I conduct it as chairman. Of course, I can wear my farm hat as well.

We try to expedite hearings as quickly as possible. We attempt to maintain a time span of approximately six months between the receipt of the appeal and the hearing. Because of the procedural demands, it is hard to shorten it. After we receive notice of an appeal, we have to acquire all the mailing lists from the municipality. Sometimes that involves as many as 2,000 names.

We have to arrange hearing dates. Sometimes if a number of professionals are involved and occasionally many appellants, sometimes 20 or 50 appellants, we try to make arrangements so they can all be present at the hearing, and it takes some time to get a date that is agreeable to all parties.

Then we have to send out notices. We always send out notices from our office. There are obvious reasons for this. We do not like to rely on the clerk of the local municipality in every case. In some cases, the remote municipalities are really not up to this type of mailing procedure, so we do it from our office. As a result, since 1977 we have never had a hearing aborted for failure of notice, nor have we had an appeal based on failure of notice.

All the hearings are oral and the proceedings are transcribed. We take our own recording equipment along and we provide a written decision together with reasons. The decision and the reasons are mailed out after the hearing.

I am pleased to say that to date, in more than 600 hearings, we have never had an appeal with respect to any matter, but of course the normal grounds for an appeal would be procedural irregularity.

We feel we have innovated in a number of areas that have represented a considerable cost saving, and I will mention these just briefly.

One is that we take great pains to set a proper and suitable date for all parties, and this avoids adjournments. Those of you who are legal counsel know how costly adjournments can be, especially when we travel across the province, in some cases to the northwest or to the north. We personally contact all the appellants; we contact the engineers and the lawyers involved, and we arrange a suitable date for everyone. Sometimes this is a lengthy process, but it avoids a later adjournment or difficulties at the hearing date. As a result, we avoid adjournments.

With respect to section 53 of the act, I might indicate that we send out notices to all parties. Section 53 of the act provides for a rehearing if there is a change in the assessment. But to avoid the cost of going back a second time to determine any change in assessment, we send out notices initially to all parties advising them that the assessment can be changed and requesting that they attend the hearing. This avoids a second hearing.

We have also innovated in one area. Subsection 58(4) provides for minor amendments if approved by the tribunal. These are frequently technical matters of no great consequence, and we provide that we will grant our approval in advance, conditional upon notice being sent to all parties interested. The notice provides for their right of appeal. If no appeal is received, the conditional order is confirmed. The result is that since 1977 we have had only four appeals, despite the fact that we do have approximately 15 to 20 such orders per year.

As well, section 98 provides for us to have stenographic services and also professional services available. We have never used stenographic services; we merely record all the proceedings. That is a considerable saving in cost. Nor have we ever acquired independent professional services. These have been rendered by me and my firm.

As I indicated before, avoiding appeals has represented a considerable saving to the province. We have never had an appeal proceed.

Gentlemen, I think that summarizes it. I would like to indicate that by the end of this fiscal year we will have had 87 hearings for this year, 20 of which did not result in a full hearing, under subsections 58(4) and 76(1) of the Drainage Act. They may have been last-minute settlements, sometimes after we arrived to conduct a hearing, but not a full one. There have been 67 full hearings.

As I have indicated, some have taken almost two full weeks to complete, so we have been rather busy. I have nothing to add. I have a list I could pass around to outline forthcoming hearings until July 6. This is just as an indication of the kind of agenda we maintain.

Mr. Breaugh: Mr. Chairman, I have a couple of areas I would like to explore. First, where this is done by mutual agreement, you really have nothing to do with that.

Mr. O'Brien: That is correct. We have nothing to do with the mutual agreement drains.

Mr. Breaugh: Would you have any idea how many are done that way in a given year, so we get some perspective on what you are dealing with?

Mr. O'Brien: I have no exact knowledge--someone else in the department might. I think you would find there are disappointingly few.

Mr. Breaugh: Can you give us any reason for that? It would seem to me the obvious preferred route. Is it easier to do it by the other methods, or hard to come to a mutual agreement?

Mr. O'Brien: My experience in that area has been in private practice in agricultural law. It almost amounts to the independence of the farmers themselves. In my experience, they sometimes find it difficult to get together and make it work and bear the cost.

I have had in my practice a few cases where it has been attempted and it worked for a while. There was initial construction, but occasionally a failure of maintenance or contribution by one party or the other.

Mr. Breaugh: I hear the government is not very anxious to encourage that. Do you agree? With respect to identifying the program and funding and encouraging it to be done in one way as opposed to another, the government rather discourages doing it by mutual agreement.

Mr. O'Brien: I cannot really say. I am not aware of the posture of the government in this respect. Certainly nothing has come to my attention, except to say I frequently have to go to meetings involving drainage. I speak at various symposia and seminars and the public at large, understandably, and the farmers themselves often resist the traditional petition or requisition drain because of the inherent engineering costs.

I know everyone is surprised and somewhat disappointed or confused when they ascertain there are so few mutual or even requisition drains, which are much less expensive. It seems it is just due to the inability of the farmers to get together and co-operate in such a venture. Every time I have spoken, I have reminded them of this possibility and indicated they might save a great deal in fees and expenses. However, in my experience, it is an area where they just do not take hold.

Mr. Breaugh: It is also true, though, that the government does not promote it as actively as it does a number of other programs it publicizes and has people who work for the ministry very active in trying to get something to happen. This government seems fairly effective with that when it wants to be, but I am not aware of any great programs to promote drainage by mutual agreement. Is there any such thing, aside from your personally speaking and participating at seminars?

2:20 p.m.

Mr. O'Brien: I can only say that, at the seminars at which I have taken part, there have been Ministry of Agriculture and Food officials and they have reviewed what is available. One aspect of that has been mutual and requisition drains. These are seminars set up in parts of the province to inform farmers and clerks. I cannot speak specifically as to what programs might be available. Perhaps Mr. Spencer can do that.

Mr. Breaugh: Yes, maybe he can take a crack at it. Is there some great program to tell farmers how to do this by mutual agreement and explaining all the advantages of it?

Mr. Spencer: The program is really a drainage program, and what we try to do is to outline the options available. The options are mutual agreement, requisition or petition drain. We try to outline the advantages and disadvantages of both. The advantages of a mutual agreement drain are usually lower cost and earlier construction. The disadvantages tend to relate to future maintenance, changes in ownership, the fact that the drain then has no legal status and those types of problems.

I would say a lot of mutual agreement drains are done, but they are usually two-party mutual agreement drains and they are very seldom registered. They tend to be two adjacent land owners. Usually it is tile drainage of relatively small size, maybe even just a four-inch tile. So they may represent a fair number of situations but a very low cost.

As soon as you involve the third neighbour or third land owner or anything beyond that, mutual agreement drains are fairly rare.

Mr. Breaugh: To flip it over and look at the other two, in which you are more active, I hear a lot of complaints that doing drainage by either requisition or petition has come to be kind of the engineers' game; that there are no winners in here except engineers; that a lot of money is wasted; that the process is long, cumbersome, very costly, very involved. In other words, it is not a very happy process from the farmer's point of view. I hear great dissent in the farm community that this started out as a program to help farmers and wound up as a make-work program for engineers and a whole lot of other people. I hear a lot of negative comments about it and I would like to get your thoughts on whether we are backing the wrong horse here.

I see one option, which appears to be rather straightforward, less costly and less involved, that is not being used a great deal. I see two other options that are becoming increasingly complicated; the fights are often very bitter, feelings run high and the farmers come away feeling that the only person who benefited from this whole routine is some engineer somewhere. Give me your thoughts on that balancing act.

Mr. O'Brien: There is no question that drains are expensive and there is no question that drainage engineering fees are very substantial.

I might indicate that the tribunal has not been reluctant to send drainage schemes back and have them down-sized. There are many decisions on this point that we have sent back. We have had hearings, since we have a section of the act that permits us to deal with engineering fees, and we have not been reluctant to reduce the fees as well. I certainly think the tribunal has acted on many occasions and has been outspoken in giving its reasons for judgements with respect to the cost of drains and engineering fees.

I might indicate that some of the troublesome areas have been in a particular part of the country. There are many experienced drainage engineers who do an exceptionally good job at a very reasonable fee. Generally they are in southwestern Ontario and central Ontario, where there is a lot of experience in drainage. In other areas--and this is more common in eastern Ontario and, to a lesser degree, in northern Ontario--there is not the experience in drainage and, therefore, greater problems are encountered.

Certainly it has been our experience in this tribunal that there have been oversized drainage works, which we call Cadillac jobs, and we have, on all occasions on which we have been confronted with those circumstances, sent them back. It is unfortunate that everyone gets tarred with the same brush. In most cases, it is a very limited group of engineers and a limited area of the country that has really been involved in the worst examples.

On the issue of petition versus mutual drains, I just want to point out that I have continuously recommended to farmers they make use of both. However, farmers--and I am one and very much involved in that area--find it difficult to get together and work out these matters, regrettably.

The Drainage Act has been around for centuries and there is a lot of collective wisdom in it. It works because there are so many opportunities for input from the parties involved. If you have read the act recently, there are more appeals procedures under this act than probably any other.

It is a complicated and very sophisticated process and I think it is a mistake to view it in simplistic terms. The record speaks for itself. Farmers just have been unable to take advantage of mutual drains and go ahead and do it on their own. In many cases they have commenced and sometimes completed the drains, but the inherent problems, such as independent ownership, arguments, and transfers of property, have resulted, in my experience--and I point out that is limited--in the fact that it is just not working and the petition drain seems to be the mainstay method.

You have indicated there has been much more public concern of late in this area, and I certainly agree. The current austere economic conditions and depressed farm prices are factors, and the fact that people are much more aware and want to have an input is also apparent.

This is one reason I support the idea of public hearings, which have an educational value and allow people input, not only those involved in farming but those who have other interests to serve, such as conservation and an interest in wildlife, preservation of habitat and that type of thing. It provides a forum for that.

Mr. Breagh: What about the concerns that are raised by a number of people that a kind of drainage Mafia has arisen and there is a group of people for whom there is not a shortage of money? To use this technique of doing it by petition or

requisition, there is a whole new industry kind of sprung up around this act, taking a good deal of money from the government of Ontario.

In communities--for example in Amherst Island and Wolf Island--there are a lot of very bitter disputes over farmers who think they need something and see there is an intervention by an industry which is getting rich on the taxpayers' money while the farmers are being denied what they basically need. Would you comment on that for me a little bit?

Mr. O'Brien: Certainly in Amherst Island there was a hearing or two I recall with great interest, and Wolf Island as well, which is a neighbouring island just down the St. Lawrence.

2:30 p.m.

There were very peculiar circumstances there. You are all politicians and realize circumstances vary greatly around the province. Amherst Island had recently discovered the potential in agriculture. It has in excess of 3,000 heat units and its potential for growing soybeans and corn has just been realized. It is very favourably located for this type of crop; it is right in the lake and quite southerly.

Suddenly a number of young aggressive farmers wanted to develop these specialized crops and they needed drainage. At the same time, there was a population, a large portion of which was absentee. A good many were really cottagers or people who owned farms for recreational purposes and lived off the island.

We had hearings there; so we had them all before us. They wanted to preserve the island as a sort of vacation area as they remembered it in historical terms. There was quite a conflict about the perception of the lifestyle on the island in these hearings. They did not want the island improved for agriculture and, obviously, there was often a conflict concerning use.

A lot of ducks in migration used the island a great deal. In fact, they even used the farmers' corn that was growing during migration. There were large areas of the island that had actually gone back. There had originally been open ditches dug years ago when farming was much more active. These ditches had filled in, and there were large areas where there was surface water in abundance, certainly in the spring and fall. They were ideal for migrating waterfowl.

So there were all these conflicting interests. As I said, people certainly wanted to preserve it as a vacation retreat, for hunting, etc., and these young farmers wanted to develop it. The council was right in the middle and there was quite a conflict.

In fact, when we went to the hearings, it was amusing. The ferry was full of outsiders who did not live on the island who were going to hearings; they all went over with us. It was an interesting experience, but it was very difficult for council to cope with, and we attempted to hear all parties.

We try to be very mindful of the fact that there are other policies of other departments of government that reflect the interests of other parts of the community; so in our decision on Amherst Island we incorporated a dam to preserve a pond for wildlife as part of the drainage project. It is maintained by the municipality for the waterfowl, and we feel this option is available.

We try to invite those who are interested in the preservation of the environment and wildlife. The conservation authorities are excellent. They participate in the hearings and come forward with recommendations. Ducks Unlimited in southwestern Ontario particularly has been very active in coming forward with recommendations. We are able to incorporate in the drainage, without in any way affecting adversely the agricultural aspect of the drain, certain features that serve other parts of the community, and we did so on Amherst Island.

Mr. Breaugh: I hear a lot of unrest around the process itself, though. A lot of people are very concerned that a lot of time, energy and--just as important from a lot of people's point of view, I guess--money is wasted on this whole process. They think it is really counterproductive, does not serve the farm community very well and seems only to serve that kind of drainage Mafia extremely well.

Would say that most farmers are happy or unhappy with the process?

Mr. O'Brien: Speaking of the main body of farmers, I would have to say without any doubt they are happy with the process, but in eastern Ontario there is a problem area of just a few counties. There is a unique situation there. First, it is marginal farming county.

If you went to some of the counties or townships down east, where I live, you would find that a third of the residents are bona fide full-time farmers and that a third are parties who own farms but who work, many of them, for the civil service or for government in eastern Ontario.--Around Kingston are all the federal penitentiaries and a great deal of government employment.

A lot of these people live in rural areas; they like the lifestyle of the country. I would say--and these figures are merely a personal estimate--a third would represent people who live in town and have farms for recreational purposes. They go out on weekends. So the farming sector, full-time farmers, make up almost one third. Then there are the other two thirds, some of whom farm on a part-time basis but earn their incomes by means other than farming.

That group of people does not see any great need--often they are running beef cattle or sheep, and drainage is not a great advantage for them. In that area one finds a lot of complaints about drainage going through. This makes it very difficult for the mainstream farmer who may represent about every third farm.

Not only that, the people involved--I am talking about, with all due respect to my media friends, the civil servants who are powerful and have access to media--are powerful and are very skilled at getting to the media. They have done a magnificent job. Sometimes we are talking about people you can count on one hand. The type of media and the impact they have had on it is out of all proportion to their numbers. This is my experience, as I see it. It makes it difficult in eastern Ontario, but that would not represent five per cent of the drainage area in the province.

Mr. Breaugh: I had heard a couple of reports that the minister was in his home town of Harrowsmith and was cornered and run out of town on this issue. People were very unhappy with this program and seemed to have the consensus the program was run by the province for the engineers and not for the farmers.

I understood it happened at Smith Falls too. They had the same kind of problem there. Coming face-to-face with the farm community, he had some difficulty justifying his programs. You seem to have a slightly different point of view.

Mr. Charlton: Did they send him over the falls?

Mr. Breaugh: Not so far.

Mr. O'Brien: I was not at that demonstration, fortunately. Again, my remarks apply, even to Portland. If you want to examine it, there are some very frustrated active farmers who farm full-time in that community. They are very frustrated, but they represent--I am giving my estimate when I say one third; it could be 30 or 40 per cent.

In my opinion, they represent no more than that. The rest of them are people who work--at that hearing I always asked for occupations, and it got to the point where they were embarrassed to stand up and give their occupations: "I am So-and-so. I work for the federal penitentiary." Next, "I work for the federal bureau of weather." It got to the point where they were embarrassed to give their occupations.

Mr. Breaugh: You think these complaints by and large are limited to a small group of people.

Mr. O'Brien: A small area. I do not want to name any names, but if you would look you would find a common engineering firm in a lot of those problem areas.

Mr. Breaugh: There is one other area I wanted to explore with you. A number of groups--I have near me the Second Marsh Defence Association--are very concerned about what is happening in rural Ontario. A number of environmental and farm groups are concerned that the tax laws are now written so that wetlands are something of a liability for a farmer. This Drainage Act works in a way which many farmers tell me is not in their best interests.

The concern being expressed by environmentalists and farmers alike is that it is bad news to have wetlands on your property and that you had better drain them in a hurry. A lot of people are starting to think about the long-term ramifications of that.

I wonder if you would make some comments about those concerns.

Mr. O'Brien: We recognize the value of wetlands and we recognize that there is a provincial policy and guidelines on wetlands. I want to assure you we were cognizant of that in our decisions. We have written quite a number of decisions lately where we have reduced substantially the assessment on wetlands, almost to zero. More important, we have encouraged the parties to involve themselves in the hearings.

2:40 p.m.

Again, I speak of groups such as the Upper Thames River Conservation Authority, which I would like to applaud as being leaders in this area. In their preservation of wetlands, they come to the tribunal hearings. We have reversed entirely the flow of drains at their request, to flow them into wetlands. Drains and wetlands are not necessarily incompatible. They can serve a common interest.

As part of a drainage project, we built berms around wetland. We have had pumps pumping water into the wetlands. In some areas we have incorporated pumps to preserve wetlands throughout the summer. There is a pump on a level gauge that acts to maintain wetlands for a much longer period of time because it is regulated. That can be very positive in many cases.

There are many examples of our having incorporated drainage schemes with the preservation of wetlands. I have addressed some environmental groups on this. I have encouraged them to come to the hearings with plans. The conservation authorities have been excellent. There is no adversarial approach to the matter. They come to the hearings and make their recommendations. In my experience, their recommendations have been very acceptable.

There are some people who try, something like the fight over the seals, to gain from the exploitation of the problem. Sometimes I almost feel they are not as interested in dealing with the answer or the resolution to the problem. I encourage them to deal with that. I am convinced we can have wetlands preserved and have drainage adjacent.

As conservation authorities have frequently said, wetlands are quite compatible next door to good farming. The environments complement one another. Always the dry lands are higher than the wetlands. That is nature. The point is that one feeds the wetlands with proper drainage from the dry lands, but it has to be done with a program and a strategy to make it work.

Too often in the past, I must admit, drains were installed without regard to this. But now the matter has a high profile and people are much more conscious of it. There has been a very substantial change. I want to assure you we are very conscious of it and determined to incorporate those interests into the decisions we make.

Mr. Breaugh: Having read the government's statement on the preservation of wetlands, which is moving in the right direction, and having listened to environmentalists and farmers talking very seriously about big this problem is becoming, when I look at the Assessment Act and see the penalty and when I see how active the tile drainage people are in that whole new industry, I get concerned.

I am happy we can point to an example here or there where we have done something good. My problem is that the basic course of action is to drain it, to make it financially unacceptable for a farmer to have wetlands. That being the case, I am less than overjoyed when I can find some examples of good work being done. When the general thrust of what the government is doing is a bad thing, it does not make me too happy to see one or two bright spots on the horizon.

Although I can read a good policy statement on wetlands and find some good examples of people being aware of how valuable wetlands are and of good work that has been done by conservation authorities, I am also aware that the Ministry of Revenue is penalizing people on a daily basis. It does not make me very happy that I can list 20 or 30 instances where that policy has been reversed. The general thrust is in the wrong direction and that continues to concern me.

I have one final question. Because you are a tribunal, there is some awkwardness. Do you try to point it out to the government when, for example, a policy of the Ministry of Revenue is having a negative impact, such as the one on wetlands has? Do you point out that one ministry is saying to preserve the wetlands and another ministry is saying to tax them.

Mr. O'Brien: I have certainly made representations to the ministry I serve, asking that we bring it to the attention of the other ministries so that we all work in common to try to develop common policies. I am repeating myself somewhat. Of course, our jurisdiction is limited; you appreciate this.

There is so much confusion. We had a hearing down in Francis Bay in eastern Ontario. The conservation people came out and they were very concerned about a drain into the bay. We were replacing an open ditch with a covered drain. Any farmer in the room would immediately have smiled, because by replacing an open ditch that was flowing effluent, farm waste and everything with a covered drain--which, as you know, is filtered water--we were improving the quality of water. During the course of the hearing they were very surprised; they had not understood what was happening. Of course, they naturally applauded the project when they found out what was really happening.

Another example is where we have had some drains in central Ontario where trout streams are involved. We like to work with the ministry because an ideal trout stream is a clean ditch that is shaded on one side, is accessible to ministry people and fishermen and has a clean, pure, steady supply of cold water.

We have been able to design some drains where we left all the vegetation on one side--the side that would leave shade on the water to protect it from sunlight--where we kept the right of way and all the maintenance on one side so it was accessible not only to anyone involved in its preservation but also to fishermen who wanted to make use of it. We had nothing going into that but tile drains, and they delivered cold water consistently, without flushing it, by the absorption process and into the ground. Pure water is going into it, and it is an ideal mix for a trout stream.

Again, we have encouraged the ministry to come to us. We are sitting there trying to design these in some cases ad hoc in a matter of a few hours. There should be a lot of preparatory planning in this type of thing, but it is perfectly possible.

This is one area in which we are directing some drainage money into pursuing other interests. We can do that; we are doing it and we are encouraging it to be done. So we are recommending to our ministry that contact be made with these other ministries so they come to these hearings with these proposals prepared and so we can sanction them and order that they be done.

That is one way we are making representations and one way we are having some drainage funds directed in the interests of other interests in the community. But, apart from that, I do not feel we really have the jurisdiction to tell the ministry--

Mr. Breaugh: That is my problem in a nutshell. I have just read a major federal government report on soil movement and the problems of erosion, and it seems to me that it at least identified the fact that there is a major problem there and that we are not paying much attention to it.

I read the Ministry of Natural Resources and the conservation authority wetlands paper or other papers it has put forward and it seems to me they have the right idea, but when I look at the day-by-day legislation that governs taxation from the Ministry of Revenue or even tile drainage by the Ministry of Agriculture and Food, the day-by-day stuff does not correspond to these great discussion papers in which we have identified a major problem. In fact, it runs quite contrary to it, and that concerns me somewhat.

Okay. I will let you alone for a while.

Mr. G. I. Miller: May I ask a question?

Mr. Chairman: Yes. You are next anyway.

Mr. G. I. Miller: I think you are well aware that erosion is a problem in Norfolk county, and there are some fine trout streams. But in developing a municipal drain, as happened

recently just out of Simcoe, they put in a settling pond and the cost was put back on the drain. It was at the request of the Ministry of Natural Resources.

Why should they not be entitled to pick up some of the cost to encourage that, which they did not do? Are you aware of that? Have you made any recommendations to the ministry on that basis?

2:50 p.m.

Mr. O'Brien: We have an appeal on that drain, I believe; I am not absolutely sure. That is an area in which I am suggesting grants should be available, if not through this ministry, through other ministries for the incorporation of these schemes. We have done it, but all the cost falls on the backs of the farmers. Needless to say, some of them appreciate it. Farmers are fundamentally good conservationists; that is what I have found. It is amazing how they will react positively to some of these schemes.

However, it is an area where grants should be available. If you are doing a major work, incorporating into a drainage stream for which the primary purpose is habitat preservation or conservation of some sort that is serving not just the drainage interest, grants should be available so the farmers do not pay the cost exclusively.

Mr. Charlton: When Mr. Breaugh raised the assessment problem for wetlands, you mentioned there have been cases where you have actually reduced the assessments. How do you go about doing that, and what authority do you have to do it?

Mr. O'Brien: The drainage tribunal has the authority to revise assessments. If a farmer stands up and says, "I have a wetland area in my farm and I am preserving it," and if we find he is doing something constructive and is actually managing it in some way, we have said, "You will have your assessment reduced, as opposed to farm land that is making use of the drain." He does not want it drained.

Mr. Charlton: I understand the rationale for doing it. I was curious about the authority.

Mr. O'Brien: We have the authority under section 54 of the act.

Mr. Edighoffer: You are not talking about the same thing.

Mr. Charlton: I am talking about the Assessment Act.

Mr. O'Brien: I am sorry. I am talking about drainage assessment. We do have not the assessment for taxation. Fortunately, I have nothing to do with that.

Mr. Charlton: Okay.

Mr. O'Brien: That is another area that is much more confused than drainage. We have the power to relieve him of

assessment for a drainage project, which we do on a regular basis. We do it for woodlots as well.

Mr. G. I. Miller: I think Mr. Breaugh hit it pretty closely. It is complicated, costly and creates a lot of problems. You mentioned eastern and northern Ontario. I would like to refer to Haldimand-Norfolk in my part of Ontario where the Drainage Act has not been very useful, particularly for the town of Haldimand.

I will give you an example. The region was planning to upgrade a road and, as a matter of fact, it did upgrade a road. They came to a section where there was a natural creek for drainage purposes. Before they would proceed with the road, they wanted to bring in the engineer and set it up to petition the farmers to clean up the drain.

The farmers in the area objected to it because of the cost. The farmers themselves had cleaned out much of the creek and it was in reasonably good shape. It demanded quite a short stretch actually, but it was quite a major drainage along the road right of way. The regional road department felt it should go the petition route.

That was three years ago and they have not been able to resolve it up to this time. If there had been some encouragement, I am satisfied each farmer would have given financial assistance to clean out the main creek. It could be workable without going through the total process.

I suppose the tribunal has been working for only eight years now. Will any recommendations be coming forward? Perhaps that is the purpose today, to review the work of the tribunal and have the committee make some recommendations. Are you making any recommendations along that route to expedite it so that it is more useful to some areas which are not making use of it now? That would improve the agricultural industry as a whole. If you are a wetland farmer or a teacher and you want to maintain a pond and produce wildlife, more power to you, but I think the farmers on either side have to be given consideration, because they have to survive too.

Another example I was speaking about was the teacher who had 50 acres on Stoney Creek. He built a dam on his property and created a nice pond with an island in the centre; but when he got all done, it backed up across two farms and because it is a particularly flat area, the farmers cannot work on either side of that stream now.

He had permission or some recommendations from the Ministry of Natural Resources--I would not say permission, because I do not think that has been clarified--but now the dam is there. He does not want to remove it because he spent quite a few thousand dollars on it, but it is causing a feud within the community. How do they get that dam out of there to make sure they get proper drainage? That is the second question.

The third question concerns a natural drainage ditch where there is no open flow of water. If a neighbour sees fit to block that ditch, he does not have to take that farmer's water.

Another instance in the same area has cost the people something like \$30,000 to take it to court. They could not go across what I would call a natural drainage way because it had been blocked off. It is not a farmer that is next to the person, but a lake resort. Consequently he had to make a cut through the bank into the lake, at the farmer's expense. The municipality put it in, but they charged it back to the farmer. It has just put him out of business because of the cost. It is a simple drainage ditch, but because he did not have to take the water, they had no alternative but to take him to court and the court upheld the fact that they did not have to take the water.

This has happened in built-up areas, in municipalities. Take the village of Jarvis. There is an adjoining farm. They built a house in the middle of a main drainage ditch, and they did not have to reroute that. The municipality has no jurisdiction. They cannot go in and tell them to reinstate the ditch, because it is not a flowing ditch.

I think there should be something within the act to clearly state that a person has the right to drain his water.

Mr. O'Brien: Mr. Miller, what you have outlined is a classic case of what they call sheet flow. I will explain it. We go back to common law as opposed to the act right now. According to definition, a natural watercourse is one that has discernible banks. It does not have to flow all year round, but if it has discernible banks no one can block that. This gets to the second question you raised of the teacher with the dam. It sounds to me as if that was a natural watercourse.

Mr. G. I. Miller: Oh, definitely. It is not a flowing stream. The Ministry of Natural Resources says it does not have any jurisdiction because it is intermittent; it drains 1,000 or so acres of land but it only runs during the rainy season.

3 p.m.

Mr. O'Brien: If those upstream farmers go to court with this--regrettably,--court is expensive and frustrating--under common law they should be able to have that dam removed or accommodation made, because that sounds to me like a natural watercourse and under common law it cannot be blocked. The upstream owners have a right; if the water is blocked, the other party is liable.

The third example you mentioned of the house built, it sounds to me like what under common law you would call sheet erosion. That is just like one downstream farmer. He can actually build a berm. It is an awful thought, but he can stop the water flowing on him from the upstream farmer provided it is not a natural watercourse. That is very frustrating and that is what would happen in that case. A good example would be putting in fill for a house and blocking what would seem to be an area of sheet flow as opposed to a defined, natural watercourse.

That last case is why the Drainage Act was really brought into existence. It changes that. If you are the upstream farmer

and the other fellow builds a dam to prevent your flow of water, your only resource is to petition. That is the main reason the Drainage Act, with all its failings, is resorted to time and time again.

The only way an upstream owner can force one downstream to let him proceed with his drainage is by petition under the Drainage Act. You might go by requisition, but then it has to be \$7,500 at the limit and that pretty well restricts it to a small project. Otherwise, he would have to go by petition.

I hope I have answered your questions. It is really a common law answer.

Mr. G. I. Miller: As far as the tribunal is concerned, there is no way imminent in which it could be simplified and clarified some day?

Mr. O'Brien: Again, we deal with these things every day, but after a petition is brought. We frequently deal with things such as the example of the dam. In fact, we have encountered a good many cases in Norfolk of dams resulting in drains, because of the irrigation ponds. That seems to be a classic instance in which the two conflict. Again, they are not inconsistent as long as a dam is built and that thing is out in the spring and it lets water flow.

You asked first whether we have any recommendations. We always have many to make regarding minor amendments to the act. They are technical matters, and I will not trouble the committee with them now, but they occur on an ongoing basis.

In terms of a larger recommendation along the lines you have suggested--that we recommend funding be made available to assist in construction costs where works are built into drains such as dams and this type of thing, for other interests--I can indicate we are prepared to do that. That is in line. I might say we have not gone quite that far, but we have recommended that these projects be considered and I think it is fair. In a number of our decisions, we have written in that the cost should not be borne exclusively by the farmer.

Mr. G. I. Miller: Do you also support funding to maintain mutual drains?

Mr. O'Brien: Yes. They have an important place. I think farmers should make greater use of them, but the custom has been that they just have not.

Mr. G. I. Miller: The other concern I wish to express is about municipal drains. People at the lower end seem to bear most of the costs. I have heard the other argument that at the top end they are not gaining the benefits either. However, has that been consistent?

Mr. O'Brien: You certainly have pointed up a feature. Most of our appeals are from downstream owners. We are continuously correcting, in our view, assessment in passing it

upstream. A lot of work is done on the downstream owner's farm. He does not really want it, it is ripping through his land, but because the work is done on his farm, there is a perception he should pay. He already has all the capacity in the world. Half the time he is on the outlet himself.

There is a tendency in some places--would you believe, there have been five municipal drains going through one man's farm? He has been assessed five times and every year there has been somebody in upgrading the drain. It is quite a burden for the downstream owner.

I can tell you that time after time, in our decisions we have admonished the engineers to be equitable in terms of assessment with respect to those owners, to bear in mind and review the position of other drains. What often happens is one engineer does it this year and two years later another engineer comes in and does it. He is not mindful of the fact that the owner is already paying on two other drains at the downstream end.

I agree with you that is a consistent problem. It is a problem of perception and we have continuously relieved the assessment of downstream owners.

Mr. Watson: Mr. Chairman, coming from the part of the province I do, I think drainage access is a very useful tool and has been in the past. There are a few things, some of which have been alluded to here this afternoon. The matter of who benefits, particularly in regard to the downstream owner, is a problem, especially when we get into the area of pumps.

Some of the downstream land would be wetland. If you are going to put pumps in, the only people who are going to benefit are the ones who are going to develop the new land. Yet they expect everybody right up to the top to pay for it. This is contrary to what you have just mentioned to Gordon Miller. It is a problem, and I know there is some concern in regard to people who have purchased land that is very wet, low and almost swampy. When they drain it, the people upstream feel they are being penalized because the land was that way when it was bought. They feel the purchasers should pay most of the pumping cost. Do you have any comments on benefit and allocation?

Mr. O'Brien: It amazes me that Dover township, which is an area you represent, has 300 municipal drains and 80 pumping schemes, yet we have fewer appeals there than we have in some eastern Ontario townships. This reflects the fact that drainage does work in that area and the farmers are accustomed to the drainage process.

On the issue of who pays for the pump, upstream owners or downstream owners, the original theory came out of that pumping area. It was a McGeorge--not the present McGeorges, but the grandfather--who developed the scheme based on the argument that the rain falls on the whole watershed and the pump pumps it all out eventually and everyone shares in it. That philosophy has pertained in Dover township. Historically, no one has quarrelled with that too much. There is no blanket rule. You can never say one rule applies in every case. As surely as you say it, there will be an exception to it.

I think it is a question of looking at it. Drainage assessment is a very technical and, I dare say, sophisticated process if you fully understand it. It takes a lot of fine-tuning. Like the British common law system, there are no two cases exactly alike and each case may require an alteration or adjustment in the decision.

3:10 p.m.

I cannot give any general overall statement. I cannot say in every case everyone should pay. I can only say a philosophy was developed in the Dover township basin and some of those areas. As you may recall, one of the leading farmers in that area, Lawrence Kerr, objected as an upstream owner to paying for a pump when that pump was upgraded. The argument presented at that time was that all the water in the whole watershed goes eventually through that pump so the downstream owners should not pay any more for the pumping of that water than the upstream owners do, unless you--and now they are getting quite technical--measure in the height that it has to be raised. The upstream owners are at a higher elevation. The arguments on it are that fine, but all the water does go through that pump.

Mr. Watson: I think we know which case we are talking about, and there is a difference of opinion as to whether the water does go through the pump. They would argue the water goes down the drain and does not go through the pump, that the person who has that downstream land is the one who is going to benefit.

I want to get into the matters of the hearings themselves, of precedents and the ability of farmers to represent themselves at hearings. The issue--I am sure we are all aware of it--is the fact that a farmer wanting to use another drain, as an example, was turned down because the engineer was not present, yet the drain he wanted to use had been passed by a bylaw in the adjoining township and was felt to be a comparable example.

Whether you use the evidence or not would be up to you, but not allowing a person to present that evidence has created considerable hard feelings in that part of the country.

Mr. O'Brien: Just so everyone understands, in that particular case we were dealing with a drainage scheme and the appellant wished to bring in, as an example of how the assessment in the scheme with which we were dealing should be assessed, another drainage scheme from another watershed.

The legal counsel present was Thurston Kee, who, incidentally, is about the most experienced drainage lawyer I know, and he objected strenuously to bringing in another scheme as being the worst example of hearsay evidence, when the engineer who drafted that other proposal was not even present to say whether or not it applied in the present circumstances, and neither was he available to be cross-examined.

In other words--and I used this example at the hearing--it is similar to being before a judge with a medical opinion. You are trying to assess what a broken back should cost, and someone says,

"I want to bring in a medical opinion involving another person and his broken back," and he wants to present that as evidence without the other doctor being present to say it is a similar injury.

Of course, there were other lawyers present and they objected. The engineer who had done that other report did not want it sent to the hearing unless he was present to qualify it.

Do you understand what I am saying? It is really applying the remotest type of evidence in the case.

I want to make it plain we do accept hearsay evidence if we feel it is relevant, but this was another drainage scheme altogether and the engineer who actually prepared that report was not even present to say that the report applied in this case. It would be very difficult for us to accept that evidence as having any application.

Again, it is similar to the broken back case. It is as if you want to bring in a letter from another patient who broke his or her back and because she got \$50,000 you want to file that letter and say, "That proves I should get \$50,000," when you do not even have the doctor in that other case available to say whether he thought it was a similar injury.

It is very remote. I think those lawyers who are present would realize it. It was really objected to by council. What we have to do--and we make it very plain to the farmers involved they do not need lawyers--

Mr. Charlton: In this case they all had one.

Mr. Watson: You get trodden on if you do not. In this case, that was the problem.

Mr. O'Brien: In most cases they do not have lawyers, but in hearings where you get into very involved situations, where you have six or seven lawyers all arguing in front of you, you have to take a different approach than you do in hearings when you are away up north somewhere and, as I say, you are meeting in the township garage. We have very informal hearings there. Everyone is very relaxed, and we try to relax everyone.

But it is a challenge to a tribunal chairman to try to conduct a proceeding with six very experienced, litigious lawyers raising points of order every time another piece of evidence is put in, and you have to tailor the formality of the proceeding somewhat to reflect the fact that they are there. In some hearings, as I say, we have not only six or seven lawyers but also six or seven engineers as expert witnesses. They are all in an adversarial contest and they are very fastidious--or should I say careful--with respect to the kind of evidence that is filed.

I would like you to understand that the evidence Mr. Kerr wished to file in that case, I must say, was so irrelevant that I could not see applying it at all. I do not think it would have been any help to us, because we had no way of telling that the drain was even similar. It was just a simple drainage report that he wanted to file; there was not enough information in the report.

Mr. Watson: I think Mr. Kerr would strongly disagree with you. If your example of the back is the case, then in terms of law, why would you ever refer to a case that had been judged before if you could not have the lawyers there and you could not have the participants there? You had a basis of who was assessed how much for the benefits. As I say, I do not think you have to accept that, but when you have a tribunal that is supposed to be informal and then you do not allow individuals who choose to appear without legal counsel to present what they feel are comparisons, you are creating the impression that you are becoming too legalistic.

From my point of view, whether you accept that evidence or not is not really the point. If you felt that the evidence was hearsay or was irrelevant, that is fine; it is up to you to do so. But to say that it could not be presented because the engineer was not there, when it was not just hearsay evidence--in terms of a report there was another drain to compare it to that had passed by bylaw--has created a lot of hard feelings in my part of the world.

The message is, "Do not go to a hearing without your lawyer," and this bothers me because I think you should not necessarily have to hire a lawyer to go before the drainage tribunal.

Mr. O'Brien: I want to assure you that in most cases the appellants come before us without lawyers; they do not use them and do not need them. We will have to keep track of it, but I would guess that lawyers attend fewer than 40 per cent of the hearings; otherwise, they are conducted just by farmers. I do not want to leave a mistaken impression.

I want to make one thing clear again. When you say "filing another case," as you file a case in court to prove another point, the parallel was not there, because this was not filing another decision made by anyone; this was just a report made by an engineer in the field. It had never been decided or adjudicated by a court or the tribunal before; it was just a report of an engineer made in the field. The parallel is not similar to filing another case or a decision of any adjudicating body, by which I think we would be very much influenced, if not guided. That is not the case. It was just a report of an engineer in the field. I just want to draw that parallel.

Mr. Watson: Okay, but I understand the other one was settled without any appeal.

Mr. O'Brien: Without an appeal, yes.

3:20 p.m.

Mr. Watson: You are telling me that if there had been an appeal to settle it you would have heard the evidence, but because they settled it peacefully the evidence could not be brought in.

Mr. O'Brien: If the matter had been appealed and the decision made before the tribunal, they would have been free to file that decision as a precedent. We are not absolutely guided by

precedents, but we are very aware and cognizant of any previous decisions we have made. It is like a lawyer filing another case in court and presenting it to a judge in support of his argument. However, in this case it had never gone to a hearing before.

Mr. Watson: It did not need a hearing; they agreed.

Mr. Charlton: They agreed.

Mr. Watson: That is the problem I have with it. If there had been a fight about the other drain and you had been called in to give a decision, you would have accepted the evidence. Because they did not have a fight and accepted the engineer's report, you were not prepared to accept that engineer's report without the engineer being there.

Mr. O'Brien: I think the parallel was made by my friend over there--pardon me; I do not recall your name--a settlement out of court is similar.

Mr. Charlton: You do not take an out-of-court settlement of a lawsuit as a precedent for one that is going to court.

Mr. Watson: When you have it covered by a bylaw on drains, I think it is a different category.

Mr. Chairman: I am not sure why the second drainage report was being adduced, but if you are in an assessment appeal court you certainly compare the neighbour's house with yours to get your assessment down. You also bring up a broken back if you have a meat chart and are trying to assess what it is worth; you look in your book and see how much a broken back is worth.

Mr. O'Brien: Those are decisions you make.

Mr. Chairman: Perhaps Mr. Watson can explain why this second drainage report was being brought in. What was the point they were trying to prove with that other drainage report?

Mr. Watson: We had a farmer who felt the other drain was similar to the one they were discussing, and that the assessments that had been accepted by the other report in terms of who was to benefit had a great similarity to the one they were doing. I do not know whether they did or did not.

The point that got the ire up in Kent county was that they were not allowed to present the second report. It has led to accusations that the drainage tribunal has become very legalistic, that if you want to appear you have to produce all the lawyers and engineers, and that it has become something it was not intended to be. Maybe I am not being fair but that is the essence of the problem over this incident.

However, can I leave that and go on to something else? I am going to ask your opinion or philosophy of what Mr. Miller mentioned in terms of the sheet drainage that was referred to and the common law that says you must have a defined channel. I am sure you have been through many cases of trying to determine when it is a watercourse or defined channel and when it is not.

Do you think when drainage was initiated in this country and a lot of the land was in bush and so forth, that principle had more validity than it has today, when some areas such as Kent county are virtually bare? Has the time come to recognize that water runs downhill whether it runs in defined channels or whether it just goes down? Some people build berms around their properties and dam the water back on the neighbour's property when it is not a defined channel.

Mr. O'Brien: I agree with you that such a concept seems to be very old fashioned and out of date. That is the common law at present. But the reason it has not been updated or changed is the presence of the Drainage Act. That is an old principle. It has remained an old principle of common law.

The Drainage Act was brought in to avoid the problem and permit drainage through the neighbouring farm that refused to accept the water otherwise. Because of the existence of the Drainage Act as an alternative, the common law has never changed. I am sure if we were still at common law to determine these, they would have had to change that and come up with another answer. But the answer to that dilemma is the Drainage Act.

Mr. Watson: If you cannot get a majority of petitioners, or you cannot do it by requisition, then you sit there frustrated. We do have a sort of majority rule situation too. Some of that was corrected in terms of acreage. It used to be worse than it is. At least I assume that you would agree it used to be worse than it is now when a whole row of people on little half-acre lots could block a farmer from draining his agricultural land just by their sheer numbers.

Mr. O'Brien: It becomes difficult. There are people that say it is too easy to drain, and the petition is too easy to get. Then there are farmers who feel it is not easy enough. I think the act tries to steer a middle course. In some of the press you read it says: "Anyone can petition for a drain. It is too easy to get. It intrudes on the rights of neighbours, etc." On the other hand, I agree with you. Other farmers feel that maybe access by way of petition is not available in every case. I think the Drainage Act tries to steer a middle course.

Mr. G. I. Miller: Can I have a supplementary? Would you recommend that it be changed? Would it simplify that? Would the tribunal not think it would be in its best interests to have that changed?

Mr. O'Brien: The question were the farmer wanted a drain?

Mr. G. I. Miller: No, the sheet drainage.

Mr. O'Brien: Oh, the common law principle.

Mr. G. I. Miller: Yes.

Mr. O'Brien: Yes. Mind you, I want to point out that there is a lot of wisdom in some of these old principles. If you start to tamper with some of these old principles, you have to be careful. I certainly feel an upstream owner has to be able to drain through a downstream owner. Certainly, every time you mention the berm concept to a group of farmers, they all shake their heads in disbelief.

Mr. G. I. Miller: If you do a survey, and that is the lowest point, should that not be drainage whether it has a major bank or whether it is a natural drainage? Could it not be simplified and say: "That is what that is for. Come and utilize the surveying process?"

Mr. O'Brien: Not unless it has defined banks.

Mr. G. I. Miller: There has always been a natural drainage there. I do not know why that cannot be changed. I am not a lawyer.

Mr. O'Brien: All I am concerned about is if someone started to abuse the process where there never had been a waterway before.

Mr. G. I. Miller: That is a different case. Then they have the tribunal to defend themselves. This way they can do it and you have no alternative but to take them to court.

Mr. O'Brien: To putting up the berm.

Mr. G. I. Miller: Putting up the berm.

Mr. O'Brien: The only alternative is the Drainage Act.

Mr. G. I. Miller: That is expensive.

Mr. Watson: I guess we are not going to change the common law here this afternoon then. The principle, though, and I have not got the answer but I know it is a problem, is that it is an argument in trying to establish what a defined watercourse is. You mentioned it when you were replying to Mr. Breaugh in defining what the watercourse is, but would you not agree that one of your difficulties is in determining whether or not it falls within a watercourse or not a watercourse in terms of defining banks?

3:30 p.m.

Mr. O'Brien: Yes. Although we deal with that indirectly, we do not deal with it directly in too many instances because, again, we are dealing not with common law, that is, where you go to court. In some of these cases you have mentioned you would have to go to a regular court; you could not go under the Drainage Act. We would be dealing with it only if there were a petition or, in some cases, a requisition drain; otherwise, we are not involved.

At this point I want to remind you we did replace the county court judges. I can quote our own county court judge. Before this came in, he said he never wanted to see another drainage case or an assessment case. They were such specialized areas that many county court judges really did not want to get involved. That is why the procedures were so slow and it frequently took a long time to get relief through the county court judges.

Again, as you will recall, it is down in your area that a lot of history in drainage is made. Certainly, the stories dealing with the county court judges in that area and the way they were treated--if they thought we were technical in our approach, it is quite a contrast to what went on before.

I do not want anyone here to get the impression that we are being procedurally minded or are not easily accessible to ordinary farmers. I think it is just absolutely the opposite; our reputation out there is to the contrary. We are readily accessible, we make everyone feel at ease and farmers find it easy to deal with us.

The single exception to that was the one case you have referred to, where we ran into a situation where that was criticized. We have frequently been criticized--I should not say frequently, but sometimes lawyers feel we are not formal enough and that we do not give due regard to the procedural niceties. It is difficult to steer a course that satisfies all parties who appear before us.

Mr. Watson: What about the drainage tribunal's relationship with the referee? Where are the holdups in getting some of these things settled? Can you fill in, for my benefit and anybody else's, where drains get stopped because the referee is involved?

Mr. O'Brien: He deals with certain areas under the act with which we do not deal. He deals with assessing the validity of a petition and the validity of a bylaw--this goes back to history, really, more than anything else--and he deals with damages. We deal with assessment, the engineering, whether a drain goes forward, etc.

He has his jurisdiction and we have ours. There are some sections of the act that extend our jurisdiction considerably, but we attempt not to deal with anything that would fall within the areas of the referee.

The referee deals with procedural situations more similar to those in a court. He has procedural rules very similar to a court's, and we have nothing to do with that. It apparently takes longer to deal with appeals, but we attempt to deal with matters more in a summary way.

Mr. Watson: Are some of your appeals held up because of appeals to a referee?

Mr. O'Brien: Yes, on occasion. If he is dealing with the validity of a petition, there is no point in us going ahead, dealing with other aspects subsequent to that, until he has dealt with the petition. On occasion, we just adjourn until he deals with it, because if he threw a petition out, we would have had a hearing for no purpose.

Mr. Watson: Are you aware--and I am asking for information--of complaints that appeals to referees are taking too long?

Mr. O'Brien: Why do you not deal with that, Bert? I do not like to comment on it.

Mr. Spencer: It is kind of interesting. We have things that are increasingly more expensive, increasingly more expansive and increasingly more time consuming as we go from a mutual agreement drain to a Drainage Act appeal, to a tribunal, to a Drainage Act appeal to the referee, to a straight court case in common law. I think it is important to keep that progression in mind. Depending on which way you end up having to go, it can get more expensive, it can get more time consuming and it can get increasingly technical.

The appeal to the referee is almost like going to court on a civil case. If you have ever done it, you know it can take a considerable length of time, it can be costly and it can be very technical.

There are rules of procedure and there are requirements for the solicitors and for the various parties to take. There are certain actions, and if they do not take those actions, the process does not move forward. So it is quite true that it does take considerable time to bring some of these appeals to the referee.

The referee has some options to speed that up, but he would not take those actions unless he was firmly convinced that one of the solicitors or one of the parties was simply trying to delay. So he has this difficulty of assessing what the parties are doing and the speed with which they are trying to expedite the matter and determining whether he should be taking any action or not.

All I am really saying is it is a different process from pretty nearly anything else; it does take time. Yes, we are aware of compliance and the referee is aware of compliance. However, there are some limitations as to what he can do.

Mr. Watson: My purpose in asking is that I know one of the functions of the tribunal is to make recommendations and I am just wondering whether or not it considered those things in terms of the recommendations.

In winding up, I want to say that with one or two exceptions, we do appreciate what you do and the way it is handled. I do not know the exact numbers and I guess I should, but I know the last time you were down at Dover township you had to

move from the council chamber to the auditorium of our home for the aged because there are how many farmers on that drain, 2,000 or--

Mr. O'Brien: There are 2,000 people on the drain and over 50 appellants.

Mr. Watson: Yes, and just to add to the complications of some of these people who worry about little things, at the hearing you have scheduled for April 24, 25 and 26 there will be about 2,000 people who are affected by the engineer's report for that proposal and 50 people who are objecting. I know that does not make life easy. Thank you very much.

Mr. Villeneuve: Mr. O'Brien, I can appreciate some of the difficulties. I know you have seen your share of eastern Ontario over the last little while and I think you have done a pretty good job when you have been in the situation quite often where it is a no-win for the tribunal.

Just going back to the referee for a minute, we are speaking of one individual who does the job of referee for all of Ontario?

Mr. O'Brien: That is correct.

Mr. Villeneuve: It has to go through the legal protocol, the whole thing, so that is probably where part of the holdup occurs. I do know there is a bit of a logjam right in that area.

Getting back to some of the drains in eastern Ontario, because of the contour, the topography, the undulation and the rolling terrain down there, we are ending up with a lot of constructions of water conservation mechanisms within drains, and they are recognized as conservation mechanisms and not having to do with drainage other than they are conserving water.

I would be very much of the opinion that the cost of these should be isolated and should be borne by someone other than the man who is looking and paying for the drainage. I know it is getting to be a fairly common phenomenon. It probably only came in within the last three years when we have seen water conservation mechanisms within drains.

I believe the Drainage Act should be amended to look at these particular problems. Again, as I said, they are more common to northern and eastern Ontario than they might be to Kent or to the other areas of Ontario.

I want to be on record as saying that certainly farmers pay for drainage, but the Ministry of the Environment or the Ministry of Natural Resources, the public, should pay for conservation.

3:40 p.m.

Catch basins are a fairly strange phenomenon, and I will use an example. Theoretically, a catch basin is in place in a drain after the drain kind of flattens out to a clay area and the uphill

terrain is a sandy, silty material that tends to wash out. The catch basin needs to be maintained or cleaned out every three or four years. Who pays for the maintenance? Is it the people on the uphill side or does everyone, including those below the catch basin who are not affected but who are part of that drainage system?

Mr. O'Brien: The basic rule is upstream owners pay. You never pay for work downstream. If it is part of a maintenance scheme on a drain, it can be spread over the schedule of maintenance. If it is regular maintenance without any improvement at all, I think it could be shared across the whole maintenance schedule of a drain, but if there is any improvement, only upstream owners pay for the work, never downstream owners.

The idea is that they are never supposed to pay for work that serves others upstream. That is the theory. In most cases, the maintenance schedule would pay for the cleaning of a catch basin.

Mr. Villeneuve: That is probably the right attitude because if that basin were not there, the entire drain would be silted in and would, therefore, require maintenance over the entire thing.

Mr. O'Brien: I see. You are talking about a catchment area.

Mr. Villeneuve: Pardon me if I do not use the right engineering terms. I mean the catching of the silting process that has occurred above. If it were not in place, the entire drain would need maintenance.

Mr. O'Brien: Certainly. That serves the downstream owners, so the cost should be spread.

Mr. Villeneuve: Again, that is a fairly new phenomenon. It works well and it saves money for everyone. I just want to know, if there is still an expenditure, who pays for it?

Mr. O'Brien: It should be spread downstream.

Mr. Chairman: I want to ask one general question. If an open ditch is cleaned out and/or straightened and nearby residential home owners have their wells drained, is it normal to charge back the replacement wells on the whole system, or does the system look around to find someone who is negligent in draining the wells?

Mr. O'Brien: Part of that answer is the policy of the ministry, but if we were sitting on that as a tribunal, we would require proof that there was a relationship. We have had many assertions that wells are affected. I am not so sure that has been proved in every case, although the tribunal has ordered that work be done on the wells or relief be given, if it felt there was any possibility of a relationship.

Mr. Chairman: Let us assume the wells have been going for many years and they are relatively shallow. When the work is done, within a matter of days or weeks, four or five wells, all close together, go dry. The consequence of one to the other is pretty direct. When new wells are drilled, is that normally charged back to the entire system, to all the farmers who are being drained?

Mr. O'Brien: That is a case where there is clearly injury resulting from a drain and, therefore, that would have to be compensated for.

Mr. Chairman: Back to the farmers who are draining into that system.

Mr. O'Brien: That is right. I have run into situations where, and I am not talking about who is responsible for that, there might be a negligence action or something against some professional, but the compensation has to be given for the injurious effect.

Mr. G. I. Miller: Just for clarification, using the example of the damming of the creek, do the families have the right to ask the tribunal to referee a case of that type? The dam was backing the water up on the other farmer's property. Can they bring that before your tribunal to referee it?

Mr. O'Brien: It would come before us only if there were a municipal drain through that scene. In another case it has been referred to us by agreement of the parties; we just act as an arbiter. If all parties agree that we will determine the issue, they can refer it to us. We require written authorization to do it, and we will sit and hear it without appeal.

Mr. G. I. Miller: Fine. The Ministry of Natural Resources is mentioned many times in the Drainage Act. Has the Ministry of Transportation and Communications always been co-operative in providing good drainage when it comes to the Drainage Act and drainage ditches?

Mr. O'Brien: By and large, we have found it reasonably co-operative. In certain decisions, though, we have had to assess it heavily for having left a situation that was unsatisfactory in order to have it corrected and assess the highway.

Mr. G. I. Miller: I notice the municipality and the railways are mentioned, but I do not see any comment in here about where the MTC is, and it can play a major role in the drainage of agricultural land. As recently as within the last month or so, I was asking the minister about drainage along the highway system, and the response was, "We are concerned only about the drainage of the highway, not about that of the agricultural land." I guess that is the reason for the question.

Mr. O'Brien: It cannot interfere with natural drainage by the construction of roads. But they are implicit. Because they are a utility that is so common, they are not named specifically, but they are involved a great deal. There is hardly a drain that goes through that does not involve a road one way or another.

Mr. Edighoffer: How many lawyers are on the tribunal?

Mr. O'Brien: One.

Mr. Edighoffer: How are the members of the tribunal picked? Do you have any input into that as chairman, or is it just done by the Lieutenant Governor in Council?

Mr. O'Brien: It is done by the Lieutenant Governor in Council. The matter has been referred to me. I do not think I would have any great influence on it, but it has been referred to me for recommendation, I think more from the point of view of whether everyone was functioning properly as a member of the tribunal.

Mr. G. I. Miller: Are they selected from around the province? Are they rotated on a regular basis?

Mr. O'Brien: Yes. There are representatives. There are three in eastern Ontario, including me, and there are five from western Ontario. Regionally, there is at present one member from Collingwood, one member from Dover township and one from Chatham, who is the drainage engineer.

Mr. Edighoffer: No one from central western Ontario.

Mr. O'Brien: Central? Oh, yes.

Mr. G. I. Miller: I think it would be a good idea if you had one from Haldimand county. You might be able to sell the program a lot better there. Someone who understands should pass it along through the proper channels.

Mr. Villeneuve: Are you available?

Mr. G. I. Miller: Not yet, but I might be. You never know.

Mr. O'Brien: Interestingly, the Haldimand clay has been a factor in the fact that drainage has not been as usual in that area. It is not nearly as developed there because of the Haldimand clay as it is elsewhere.

Mr. G. I. Miller: That is why it requires good surface drains and it will work just as well.

Mr. Chairman: Are there any further questions? Thank you for being with us this afternoon, gentlemen. We enjoyed your answers.

The committee adjourned at 3:50 p.m.

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STANDING COMMITTEE ON PROCEDURAL AFFAIRS

REVIEW OF AGENCIES, BOARDS AND COMMISSIONS:
LIQUOR LICENCE BOARD OF ONTARIO

WEDNESDAY, FEBRUARY 13, 1985

Morning sitting



STANDING COMMITTEE ON PROCEDURAL AFFAIRS

CHAIRMAN: Treleaven, R. L. (Oxford PC)
VICE-CHAIRMAN: Watson, A. N. (Chatham-Kent PC)
Breaugh, M. J. (Oshawa NDP)
Charlton, B. A. (Hamilton Mountain NDP)
Cureatz, S. L., (Durham East PC)
Edighoffer, H. A. (Perth L)
Kells, M. C. (Humber PC)
Mancini, R. (Essex South L)
McNeil, R. K. (Elgin PC)
Miller, G. I. (Haldimand-Norfolk L)
Rotenberg, D. (Wilson Heights PC)
Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Substitution:

Hennessy, M. (Fort William PC) for Hon. Mr. Kells

Clerk: Forsyth, S.

Assistant Clerk: Decker, T.

Staff:

Eichmanis, J., Research Officer, Legislative Research Service

From the Liquor Licence Board of Ontario:

Blair, W. L., Chairman

Boukouris, P., Director, Administration Branch

Flowers, J., Executive Director

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON PROCEDURAL AFFAIRS

Wednesday, February 13, 1985

The committee met at 10:08 a.m. in room 228.

AGENCIES, BOARDS AND COMMISSIONS
(continued)

LIQUOR LICENCE BOARD OF ONTARIO

Mr. Chairman: Gentlemen, shall we come to order? We have in front of us the Liquor Licence Board of Ontario: W. L. Blair, chairman, John Flowers, executive director, and Paul Boukouris, director. Mr. Blair, do you have an opening statement, written or oral?

Mr. Blair: I have nothing written, Mr. Chairman. This is the first time I have appeared before this committee and I am a little curious as to your procedure, not that it bothers me much.

Mr. Chairman: The guillotine is to be brought in in just a few minutes.

Mr. Blair: That is all right. There will be others who will support you in that.

Mr. Chairman: Some chairmen give a brief overview of the workings of their boards--

Mr. Blair: I can do that.

Mr. Chairman: --and perhaps any current problems you may have, any outstanding issues--we know, for example, there is always a certain amount of discussion on special event permits and so on--anything like that you would like to bring up, and then members will ask questions.

Mr. Blair: Mr. Chairman, in April I will have been here four years. In 1981 we had a staff complement of 245 and in the fall of that year 70 persons were transferred to the fire marshal's office. That greatly reduced our inspection department and a few people went from other departments as well.

I must say that has had the effect of reducing our capacity and our ability to police licensed establishments in the way we would like to. We have something in the order of 10,700 licensed establishments in this province. The number has increased fairly regularly in recent years, although the rate of increase is no greater.

We are about to change from an annual inspection to a biannual inspection, having in mind that something less than 10 per cent of our licensed places are problem areas. Most of them are very good operations, are well run and cause a minimum of fuss or bother to the board. The others need continual supervision and scrutiny.

In the past several months we have undergone an operational review by the ministry and representatives of Management Board. They are recommending a few changes and updating, all within the complement of staff. We have made a few changes as a result of that, all within the confines of the 175 we are left with.

In this fast-moving world we are always looking at amendments to the regulations to keep up with trends and what society demands. Soon we hope to undertake a review of the regulations and perhaps certain sections of the act to bring it more in line with what it should be.

Our licence fees are certainly too low. A person can get a dining lounge licence for \$20 a year, initially and at renewal. Two or three years ago we reviewed the licensing structure within our board, but at the same time the restraint program was imposed so we are in a hold position.

We think a case can be made to have the licence fee reflect the cost of a licence being issued in the first place, with perhaps a lesser fee for renewal, although that is still being discussed. Licences are renewed for two years at a time and \$40 is paid for each licence.

We have to draw a parallel with what other jurisdictions are doing because of our gallage fees and other fees we collect from the industry. Our total budget is a little less than \$7 million and it has increased by reason of inflation and nothing else.

Four years ago, through the board's operations and items over which it had very little control, it generated \$125 million for the consolidated revenue fund of the province. In this current year, 1984-85, the anticipated amount is \$256 million.

Our budget has gone up very little, so if members think I am pleading our cause, I could very well be. Most departments do not have enough money to do the job they are expected to do. Having due regard to the sensitivity of liquor related items and liquor related legislation, we have to keep on top of the situation continually. By and large, our staff is excellent and doing a good job within the confines and restrictions of our budget.

You mentioned special occasion permits. No doubt you have been waited upon by the Ontario Hotel and Motel Association, which has that as its main complaint these days. True, there are functions that could very well be held in a restaurant or a hotel that is licensed, but many of those hotels, which comprise the membership of the hotel-motel association, cannot offer the physical facilities nor can they offer the value these people can get in community halls. I do not think they have much to complain about other than the fact that we know and admit there are SOP functions taking place which we do not inspect because of a shortage of staff. Some people are getting away with things they should not be.

This is a different group from the estimates committee, so I should mention we had a meeting with the Ontario Provincial Police and others in western Ontario, dealing with Perth, Huron, Bruce,

Wellington and those areas, where we have had a lot of trouble with junior farmers' dances. I am not too sure if I should say this publicly, but there seems to be some feeling in some areas that the minimum drinking age is 14. Maybe it is lack of communication or something. In any event, the policing authorities, including the municipal people, are very concerned about this. We have a practice now that, unless it is a family affair, an anniversary reunion or that type of nonfund-raising thing, we are very reluctant to allow minors to attend these functions.

If any of you subscribe to the Ontario Innkeeper, which has rather inflammatory editorials every once in a while, you are likely to have seen mention of the fact that the big ogre facing the hotel-motel industry is the large increase in the number of SOPs that are issued. They mention this all happening in the last three years. I do not know if it is a coincidence that it is three years since I appeared on the scene, but I think there is more than just coincidence in some of the statements made.

In the last three years the special occasion permits that have been issued by our board have been fewer than they were during the three years before. Not by much, but there were fewer. That may be attributable in part to the fact that there has been an increase in the number of licensed establishments. We issue about 156,000 a year, give or take 1,000. If you break that down, it is about 3,000 a week. That is what it has been for six or eight years. It is a revenue-generating function. We get about \$3.3 million from SOPs per year. We are not in it to make money, I suppose, but we are not in it to lose it either.

We are in the process of adjusting the work schedules of our people and I have been advocating the acquisition of some part-time inspectors whose duties will be to work on weekends when most of these functions take place. There should be a spot in the scheme of things for people who have reached the age of 58 or 60 and have been retired but still have some useful years left in them to do this job.

As you can appreciate, part-timers are not looked upon favourably by the unions. All inspectors, in case you did not realize it, are members of the bargaining unit. The contract that expired last June 30 has not been renegotiated. It has gone to arbitration. They were not willing to settle for the normal five per cent. They thought they should have seven per cent or more. Is that what it is, Paul?

Mr. Boukouris: Yes, they are demanding 7.5 per cent.

10:20 a.m.

Mr. Blair: Anyway, they decided to go to arbitration and the date for that hearing has not yet been set. Before that decision will be handed down, we will be in the middle of negotiating for the next year. Some of the things you may hear from time to time are directly related to the fact the agreement has not been settled.

I do not think there is anything else of a general nature. I will refer to a couple of items. Last fall there were at least two items raised in the Legislature as a result of newspaper articles. One was in Windsor. It certainly focused on our ability or otherwise to get proper information regarding the background of certain applicants for a licence. In Windsor, our skirts are clean because we went through the regular procedures. From that point of view, we are all right. We are having trouble with the system that has been in vogue in Ontario for some time, of people forming a numbered Ontario company to act as a front for other activities.

Our means of checking out the backgrounds of these people is such that unless there is a definite tie-in with people to whom we would not want to issue a licence, if there is no mortgage or other related financing mechanism in place, there is very little we can do about it. However, we have recently made some changes at our place to enable us to ferret out this information better than we ever have before. In the next few months we will have a mechanism in place to know the background of people applying.

It is unfortunate that people who are using exotic dancers, for one--as you may know, Mr. Chairman, they are coming to the great city of Woodstock soon--

Mr. Chairman: Right. They have even reached Woodstock and Oxford county; male and female.

Mr. Blair: In the light of what has been in the news for the last day or two, I suggest you keep away from there.

Mr. Chairman: If I get any urges, I just go out and look at the statue of the cow on Tom Dent's farm.

Mr. Breaugh: I have heard of perversions--

Mr. Chairman: Willis is an old Oxford county boy and he knows about the cow in the east end of Woodstock.

Mr. Cureatz: There is another problem: Richard has nothing to resign from.

Mr. Blair: To be serious for a moment, we have to be extra cautious before we issue a licence for an entertainment lounge. This is what I was alluding to, the one taking place in what was the old New Commercial Hotel, and lounges and so on, the type of operation where they do not have to meet a food/liquor ratio of any consequence. Lounges have no food/liquor ratio. Entertainment lounges have a ratio of 85 per cent liquor and 15 per cent food. These places seem to be ready-made for people who are franchisers of girls and who are using these places to make a lot of money. Goodness knows who is behind all this. We are conscious of this problem and attempting to do something about it.

I have nothing more to say now. In case I may be touching on a point or two that is not of any interest to this committee, I would be interested to know what the committee has in mind.

Mr. Hennessy: Mr. Chairman, I have often wondered why, when you fill out a special occasion permit or a banquet permit in Thunder Bay, it has to go to Toronto for the blessing. Then you run into a problem when you have people from your riding complaining to you. Sometimes they are good organizations that have done a lot of work. I am not criticizing the board, but it does not know those people. The member knows the people, and it puts him in a very awkward position.

They come clamouring at the door wanting a permit, thinking you can just write it out for them. You phone the liquor board and you do not get satisfaction. You get, "Maybe," "If" and "We will look into it." It is as if Sherlock Holmes were going to make an investigation. They do not seem to take the member's word that it is a good organization.

I have had occasion to say a permit should not be given because I know the people are in it for a buck and that it is not a good organization. It makes it very difficult. I wish we were not saddled with that problem. They come to you on a Wednesday and say, "Friday night we are having a dance and a lot of your friends will be there." The first thing you know you are stuck. If you do not get it they say, "We saw so and so and he could not do a bloody thing." Then you get caught.

It is not that we should have your authority. However, is it not better to have the main decision made in the area, in the town or city where the permit is applied for? The people on the local board would know. You have to get the inspector. He is very co-operative, but it creates a lot of tension. That is my concern.

We are so far away. We are about 1,000 miles away. I am not saying it is an epidemic. You can get in touch with Toronto. However, I seem to have learned at Queen's Park that whenever you phone anybody of any importance, he is on the other line or out at a meeting. I do not know whether that is contagious. I am not sure about that.

I am concerned about somebody who phones me today and says, "Friday night we are having a do and the Liquor Licence Board of Ontario has told us we cannot have one." You have to start phoning some people and get hold of the inspector. If it is a legitimate group, it causes a lot of confusion.

If these were guys trying to make a fast buck by having rock dances and then leaving town, I would not be in favour of it. However, you get the hockey club, for instance. It won the Allan Cup many years ago. Somebody tells them they should chip in \$200 each. There is a budget of perhaps \$100,000 with the way hockey is today with the travel, etc., and they want to pick up some money to keep it going. It is the only team in town. The other two are junior teams. There are about a couple of thousand people. It is like anything else. Nobody will go out and play for fun. If they do not get \$10 put in their shoe or something--that is the name of the game, I guess. This is what concerns me. Those are the problems we may have.

I am not criticizing anybody. The member is on pins and needles waiting to see if the bloody permit comes through. That is what I am concerned with. If it is not entitled to it, I support that 100 per cent, but if it is a good organization it should not have problems.

Mr. Blair: People in Thunder Bay can go to one of the liquor stores and get a permit for a regular type of function such as an anniversary, a wedding or that type of thing.

Mr. Hennessy: That is not a problem.

Mr. Blair: It is when you get into fund-raising that the problem starts. We know that section of the regulations needs amending. There is a term there that is open to interpretation by an individual depending on the mood he is in.

Unless we know something about the organization--we rely on members such as you, Mr. Hennessy. I know you have called me at different times as have several others to support an application. There is one thing in the special occasion permit section that needs real scrutiny and we are attempting to do something about it this year.

Most individuals or organizations that apply for permits are bona fide. When a person applies to have a function in a certain hall, we usually have that hall recorded in our register. We flip over the page and there it is. We know the capacity. We know there is no problem about exits or other facilities. The fire regulations are oka. However, if it is a new hall or a place seldom or rarely used for a special occasion permit function, that gets our people wondering.

10:30 a.m.

A lot of promotions are taking place in commercial establishments these days. They may have a room designed for that, to bring in a group of salesmen or potential customers. Those give us a little problem too because they are using that to make a few dollars. If it just a matter of taking care of the cost of providing the drinks, we do not get too exercised over that.

Mr. Hennessy: What I am saying is that there are organizations such as the one I mentioned--I am not criticizing you, I am just telling you how it happens--where you get a third degree on the other end of the line: "Well, if that is the only permit they are going to have this year, okay, we will pass this one."

I do not know whether they are going to come back and want another. It is a fund-raising event to keep the hockey club going. They travel to Manitoba to play all their games. Naturally, if they charter a plane on a weekend, they are not going to live by what they get at the gate. Therefore, all the money has been spent. It is a community effort, and they want to raise funds.

When somebody says to me, "If this is the only one they are going to have this year, I will grant it," I cannot say it is the only one they are going to have. They may have another one this spring. They may not. If they win the Allen cup again, they would have another one.

I have a lot of faith in your inspector up there because he knows everybody and he is all over the place. He would even know how much money they have in the bank; that is how well informed he is. We depend on him. If there is any argument on their part in regard to giving--you are aware that a few years ago I did not support two or three of the applications that came up. I said I would not support them because I have to go to you people again, and I do not want to have the reputation of supporting anyone who will vote. That is not the idea. A bona fide organization should not get into that hassle because it reflects on the member, no matter what party he is in.

Mr. Blair: There is a section here, on page 51 of the regulations, that says: "The holder of a special occasion permit issued with respect to an event to promote the advancement of charitable, educational or religious works, or to serve community needs, shall"--"community needs" is the section that is open to interpretation, depending on where you sit--"when required by the board submit to the board a statement completed by a public accountant licensed under," etc., and indicating several items there.

If they have a licence under the Charitable Institutions Act where donations can be used for tax purposes, we do not have any difficulty with that. There is one thing we are having more problems with than anything. This is a municipal election year in Ontario. The political parties, whether provincial or federal, can do certain things, but a municipal candidate really cannot, unless we interpret that as a community need.

We have people coming in to raise money in advance of their campaigns, and those of you who are in politics, and some of us have been, realize that these things cost money. But the problem we have is that the person could get a permit to raise money during the summer of 1985 for an election in November and then may not even run as a candidate.

Then he may come along afterwards, especially if he was defeated and owes money--he will have trouble getting it then; there is nothing as dead as a defeated candidate after an election. His friends will rally around and try to have a get-together with a permit to raise money to liquidate those debts. These are types of problems we have.

Mr. Cureatz: Would you like further instruction on that? Do you think it is something the government should take a look at? Should the committee make a proposal?

Mr. Blair: We are going to review that. We are looking for any input we can get from anyone on what constitutes a community need.

Mr. Cureatz: Along the lines of Mr. Hennessy's comments, I might say, generally speaking, my riding offices in both Oshawa and Bowmanville have always had good co-operation with respect to the various groups. Perhaps I have not stumbled across the kinds of groups Mickey has.

Mike Breagh and I in Oshawa have a more plentiful supply of various organizations. I do not have a hands-on feeling as, say, Mickey does, but generally speaking, when we are in a pinch I know my staff have called to speed up the process. It is always worth while. I would like it to show on the record we do appreciate that kind of co-operation.

Mr. Breagh: I have a few areas I would like to explore. Mr. Hennessy just raised one. I think there is a need to clarify what you mean by community groups or needs. I have had similar situations in which softball organizations, for example, obviously were running an event as a fund-raiser. I happen to think minor softball is a fairly noble piece of business. However, they were questioned and their licence held up because it was not clear whether they were a charitable organization or not. I would join with you in asking for a review of the regulations in that regard.

You may want to put some restrictions on it, but certainly sports groups use dances and various social occasions to try to raise money as a matter of course. I think we all know that. There is a bit of hypocrisy at work here. You are forcing an amateur sports group, for example, to pose as a charitable group when it is not. I do not see any need for that, and it is one area where I would like to see the regulations changed. If the law needs to be changed, that should be done as well.

I appreciate tthat here is a problem trying to identify who these people are and what they are doing. Surely we can overcome that. If you want to limit the number of activities they can have, I suppose that is reasonable. It is also true that amateur sports groups, for example, have a real need to raise money. About the only way they can do it is through a social function, which usually involves a beer tent or a bar at a dance or something. I think we are all in agreement that this is a pretty legitimate type of activity. I am somewhat frustrated from time to time. In my experience anyway, you always manage to get it sorted out somehow, but the aggravation seems totally unnecessary.

Mr. Blair: We have looked more favourably upon issuing a permit to a league than to individual teams on a regular basis. If it is hockey, individual teams may have a get-together in September and then a windup dinner at the end of the season. We acknowledge that. Those are two operations. We get a little jittery if they want one in between, or to raise money to go to someplace in Michigan or somewhere to play hockey or something like that.

Mr. Breagh: One thing maybe we are not understanding too well is that if you are involved in amateur sport, and I do not care what it is, a track or a ball or a hockey team, you are now doing things we never did when we were kids.

I used to think if I got a chance to play hockey in Bowmanville, it was a big deal. Kids now think maybe going to Newfoundland is not much; going to Sweden is pretty good; if you make a world tour, that is what you should be doing. I have had kids in organizations who were playing everything from broom ball to hockey going all the way around the world. It is just a matter of course. Amateur sports is like that.

For example, some of my kids are active in track and field. Track kids are competing across this country and in the United States. The amateur organizations that run these operations have expenditures they did not have previously. If we want these kids to get competitive, we need that.

Mr. Blair: We had a request just lately in western Ontario, where a ladies ball team won the Canadian championship and was invited to go to Australia. That caused us a little concern because the rumour got around they were having this big event--in their riding, next to Mr. McNeil's--to raise money to go to Florida or the islands. We had to get that sorted out and take it at face value that they were, in fact, going to Australia where the air fare return was \$1,820 or some such thing. However, that was granted.

Mr. Breaugh: I am afraid we do not have much appreciation of the expenses involved. To put a dozen kids on an aircraft and take them anywhere in this country is expensive. Going across the ocean is really expensive.

In one sense amateur sport is overorganized and in another it is not very well organized, because it comes about in a variety of ways. In my community, for example, organizations spring up that sponsor 12 ball teams. There are others that sponsor one. One organization may be serving 800 or 900 children at once. Their need to make money from bingos, dances and whatever is much different from another's. I think that is an area that requires some investigation and we need to find better answers.

10:40 a.m.

Mr. Blair: There is peer pressure there, too. Some amateur teams have a nice, kindly father or grandfather who is footing the bills. Then word gets around, "If this team can do a certain thing, why cannot our team?" They just do not have the funds. Mr. Boukouris has a point on that he wants to make.

Mr. Boukouris: Actually, we are in the process, and it is more or less under my direction, of reviewing all the regulations relating to the Liquor Licence Act. The first step we have taken is with the permits because they are, as you can see here, where the greatest public interest seems to be. I have been meeting with a lot of groups, some of which are ethnic groups and whatever, who want the permits to be easier to get. Some of them are industry groups representing the licensing trade. You have, as you can imagine, another understanding.

One of the specific questions we are looking at is the fund-raising issue. That and the number of permits are the two things that appear to be the greatest difficulty. What we are trying to do is get away from a situation where the approval clerk, whether it be in an Liquor Control Board of Ontario store somewhere in your riding or down at the head office, has to make a determination as to whether he or she thinks you are a charity. Because the way the regulation now reads, that is the way it is.

We are looking at a number of proposals, but the kind of thing we are looking at to allow this kind of organization to function is for it to give us a registered charity number from the Income Tax Act. There are very specific grounds defining a charity under the act. A lot of these organizations already have those numbers. They would not have to do anything special for us. They would not have to fill in their form. They would simply have to give us that tax registration number.

For those organizations that do not have the continuity you would have to have for that or where it may be an ad hoc arrangement to raise money for a specific event in a community--sometimes there is a tragedy in some family or there is some specific event such as a team wanting to go somewhere--we are looking at an arrangement whereby the municipal council or some local body would write to us and say it approves of this community organization and its charitable ends.

The third thing we are looking at to try to sort out the abuses that come from fund-raising is to put some kind of a cap on the numbers per year. How the regulation will actually read remains to be seen. It is a legal problem, and these are only drafts. We think some combination of those things will meet the concerns.

What happens now with regard to a charity is that, in the absence of a specific guideline, the board has tended to allow permits for very young people but not for adults, not unreasonably. Generally, it is the adult fund-raisers that tend to be businesses.

We have had situations--we had one in Toronto where an organization got 54 permits for fund-raising in a year. It was clearly a business, which is not what the permits are intended for. We did not really have a way under the regulations for saying they were not a community organization. We are trying to get away from that.

By being specific and requiring things that the people would probably have anyway, we will do two things. We will avoid the hassles that Mickey runs into phoning down because the document will already be there, just as the approved hall was already there. The other thing is that there will be some local input because the local people will be able to say, "Yes, this is something we want in our community." The board then will not be telling somebody in Thunder Bay or Haileybury or anywhere else what we think should be operating in the district.

We think a combination such as that with a whole set of regulations for permits will do it.

Mr. Breaugh: In my experience, the system usually works. It is just that there is an immense amount of frustration about that last-minute, mad dash down to your head office to pick up the licence. It seems to me that one of the things you might consider is to try to get your criteria established and then let it be done locally--

Mr. Boukouris: That is what we were hoping for.

Mr. Breaugh: --so that at least people are not making a mad dash down Highway 401 to get a liquor licence.

Mr. Boukouris: What happens now is that the permits are issued from the store, but to try to have some control over fund-raising over a certain size, they get referred to the head office. With a clear set of guidelines, we could then evolve those better. We are also trying to look at a better management information system, perhaps computerized, so that if we put a number limit on, it would be very quickly ascertainable whether or not you had three or 30 this year.

One of the problems we have in decentralizing now is that if you were to go to a local liquor store in Thunder Bay, the chap really would not know how many there had been. Until we could put in a system with that available to him, we need to centralize it, because Mickey will then find that the local business people will be coming back to him.

Mr. Breaugh: There is another area that concerns me a little bit where we seem to have some trouble. I recall a few years ago a guy who ran a bowling alley called me up with what I considered a pretty reasonable argument. He wanted to know why, if a curling club can get a liquor licence, a bowling alley cannot. There was a long involved harangue before that was resolved. Sam and I were bowling for Big Brothers on the weekend in a bowling alley where they had the magnificent facility of a bar overlooking the bowling lanes.

How do we get so wrapped in silliness like that and spend a lot of time and energy arguing whether it is legitimate to have a bar in a curling club but not legitimate to have a bar in a bowling alley?

Mr. Blair: Was the bowling alley licensed?

Mr. Breaugh: Yes. It had a dining lounge licence.

Mr. Blair: It can have a club licence too. Maybe that was a legitimate dining lounge licence as opposed to a club licence under the recreation section.

Mr. Breaugh: Except that a couple of years ago you decided bowling alleys could not have bars, for reasons that escape me.

Mr. Blair: No. It was only a couple of years ago that we included them. We had quite a debate about the number of alleys a bowling alley would have to have before it qualified. That was bounced around and we now have six.

Mr. Breaugh: I do not understand how we get involved in these arguments in the first place.

Mr. Blair: As you know, we now have skiing, curling, golf, handball, racquetball and bowling. There is real pressure being put on us now to include hockey arenas; in the main, to start with at least, multiple arenas. There are several of those in the Toronto area. The minute we recommend a course of action that would involve an operation based in Toronto, we know what we will get outside.

Mr. Breaugh: This is another argument I do not understand at all. There is the big deal about how you cannot serve beer in an arena. Every arena I have been to lately seems to have a lounge. There is a little classification system here which says the lounge is open only certain hours or it is a game club or whatever.

Mr. Blair: You must drink in the lounge. You cannot take your drink out into the stands.

Mr. Breaugh: I do not understand this argument at all. I do not understand why at Maple Leaf Gardens, for example, there is a place you can go and get a drink, but Joe Schmo, who does not want to go to the Hot Stove Lounge, cannot drink. I think this is a tremendously stupid expenditure of time and energy.

Mr. Cureatz: I hate to say it, but I agree with Mike Breaugh. In my riding, I have many beautiful hockey rinks, all built through Wintario. When we had that big scare about arenas closing down, we went to bat and got tons of money. We raised money to build a beautiful combination community centre and arena in Orono, but it was not allowed to put in a window to overlook the hockey rink if it was serving liquor.

That has to be the craziest thing I have ever heard. If there is a concrete wall, it is okay, but if you put a window in--which to me seems logical; you have a beer and you look down and watch the kids playing hockey. I was baffled, dumfounded. The government again drove me crazy. Will someone explain that one to me?

Mr. Breaugh: It is pretty difficult to explain to our constituents why they can go down into the bowels of the arena and it is okay to drink there but they cannot see anybody. Apparently if you cannot see them, it impairs your ability to get drunk or something. I do not know.

Mr. Blair: I guess there is no answer to that, but 10 years ago requests for that type of facility were almost nil. This has all developed in the past few years. I am one of those who thinks a case can be made to have a lounge in a hockey arena, but I think you have to be very careful about it because the people who are playing hockey are young.

Mr. Breaugh: Yes, but the tykes are not going upstairs in their skates for a beer.

Mr. Cureatz: The parents go up and get snapped and then take the kids back home. What is the worry?

Mr. Breaugh: What bothers me is the argument about beer in the ball park, which went on for some time. Anybody who ever went to a football game at Exhibition Stadium had ample evidence that there was a lot of drinking in the stands. We went on for years and years with this long argument. It is the same as the ball clubs that come to me in the summer and say, "We have a tournament this weekend and the difference will be whether we get a beer tent and regulate the supply of alcoholic beverages that way and let the ball club make some money, or does everybody tailgate with a case of 24?"

It does not seem to me to be a sane argument. It certainly is not worth spending a lot of time and effort on. We know they are going to be consuming alcoholic beverages at those functions. Why do we not simply acknowledge that and regulate it?

Mr. Blair: I am not arguing against it.

10:50 a.m.

Mr. Chairman: Do you feel like the tail gunner or maybe the rear guard who keeps getting pushed--you are retreating all the time?

Mr. Blair: Yes, I suppose that is right.

You likely know in the way we operate our board we deal with the one ministry. I suppose a lot that transpires there, or the amendments that come through, have some relationship to the feelings of the minister there.

Gord Walker was minister for the first 10 months I was on this job. As long as Dr. Elgie has been there he has been dragging his feet on it, obviously because he did not think it would wash. If there is such a feeling among the members of the Legislature and they can convince the government, I am sure we can work something out.

Mr. Villeneuve: I think we must remember a group of people here who have not been mentioned yet, and they are those who own some of the small-town hotels. I have a number of those people in my riding, in towns of 500, 1,000 or 2,000 people.

There was a time when owning that hotel was probably the best business in town. But owning that hotel today is a drag, a severe drag. I have pressure from them: "Are we going to survive?" Booze is expensive. I guess it is a necessary evil.

These people must not be forgotten, because they are still upstanding people in our communities, trying to make a living. They are being charged through the nose for the licence, and their booze is more expensive than what we buy at the liquor store

because they have the fee. We cannot forget those people either. Their hotels have gone down in value tremendously.

Mr. Breaugh: That is part of free enterprise.

Mr. Cureatz: I have no quarrel with that, but we were not even asking for a lounge at Orono. We were asking for, from time to time, a special occasion permit. "That is fine. You can have it in the community room, but you cannot put in a window to overlook the arena." I do not know. It boggles the mind.

Mr. Chairman: Mr. Breaugh, do you still have some questions?

Mr. Cureatz: Do you have a response to that, sir? We always got along so well; we do not want to jeopardize our great ongoing relationship, but I must say that was a real clunker for me.

Mr. Blair: If you look at the recreation section in here, you will find those five forms of recreation included. There is nothing sacred about the magic figure of five; it could be made six or seven, and in the fullness of time I am sure it will be--maybe even more.

I find this very interesting and, as far as I am concerned, very encouraging.

Mr. Breaugh: Let me take you into another area--

Mr. Blair: Excuse me. Before you start, Mr. Breaugh, Mr. Villeneuve was not here when I mentioned the cost of a licence. It is the cheapest thing going in this world. A licence is \$20 a year.

Mr. Cureatz: What about getting it, though? That may be the expensive part.

Mr. Blair: No, it is not. We have no upfront charges at all. That is the cheapest thing.

Mr. Cureatz: For a hotel?

Mr. Blair: Sure.

Mr. Watson: What about the costs they have to incur that people with special occasion permits do not, in the taxes the government would collect?

Mr. Blair: They are commercial enterprises and pay realty and business taxes in their communities. A lot of the community halls that provide the facilities for these SOP functions are municipally owned and do not pay taxes.

Mr. Watson: Is there any extra tax on the liquor that is sold through licensed premises versus that sold through a special occasion permit?

Mr. Blair: Apparently there is an even break there, because they pay a levy on top of the product they acquire.

Mr. Watson: How much? Is it a percentage or is it corkage?

Mr. Blair: No, it is not corkage. It works out to about the same as far as the product is concerned, but they do not have the overhead that a licensed establishment has.

I made the observation before you came in, Mr. Watson, that a lot of these hotels that are doing the moaning and groaning do not have the the type of facilities that make it attractive for a lot of these organizations to go in and have their functions there.

Mr. Watson: I agree with that, but I was also under the impression that when a hotel purchased its supply of liquor, it paid some kind of tax levy that the people who had a special occasion permit did not pay.

Mr. Blair: The entertainment lounge operators pay an extra 12 per cent. That is why a lot of licensees do not want to go to the entertainment lounge route, even though they qualify by the number of seats, which is 200. They want to avoid that. Lulu's in Kitchener is a prize example of that; it has an entertainment licence.

Mr. Watson: How many entertainment licences do we have? Are they not very limited?

Mr. Blair: About 38 or 40.

Mr. Watson: There have been a lot granted in the past couple of years then. Did we not have just five in the province a few years ago?

Mr. Blair: Yes. It has doubled in two years.

Mr. Breaugh: I want to get into another area you touched on. We appear to have a major problem in Ontario that is recognized by the Solicitor General and the Ontario Provincial Police, and it gets a fair amount of press from time to time; I refer to the matter of motorcycle gangs, strippers and hotels, all of which in a sense are pretty tightly regulated but the problem still seems to be there.

It is now apparent that there are motorcycle clubs that have diversified, as they say in the free enterprise system, and have gone into the business of supplying strippers or exotic dancers, or whatever you want to call them, to various licensed establishments. Although we seem to be aware of the problem, we do not seem to be able to do much about it. What is your board involvement in all of that?

Mr. Blair: I think you heard my comments about the investigation we make on an application for a licence. Regarding the motorcycle people, we have had dialogue with the OPP, the Ontario Police Commission and others. Where once it was felt that there seemed to be a real infiltration into the licensed premises by these people, the end result of their investigation was that it was not as great as anticipated, although they may be involved in

some aspects of it. But there are a lot of people who are not involved with motorcycle gangs who are franchisers of girls. They could not care less about running a bona fide hotel or a bona fide restaurant. They are there to make a quick buck by providing entertainment.

As I was saying, one of the problems we have is getting behind the numbered Ontario company with one or maybe two shareholders; I guess there have to be three, but for all intents and purposes, one person is the sole owner of that company. The more sophisticated these people get, the more sophisticated legal advice they get. No matter how our people track it down at the ministry, in the commercial registration branch, they run into a roadblock in finding out who is footing the bill.

Mr. Breaugh: Are you contemplating a change in the regulations or the act which would require them to divulge who are the investors in a company or something like that?

Mr. Blair: We are getting a little more sophisticated ourselves in our checks beforehand. I have warned my colleagues on the board who hear these applications that every time there is one where, by the very nature of the application--whether it be an entertainment licence or a transfer of a lounge licence, because we do not issue new ones unless it is in a hotel--there appears to be a ready-made situation for some undesirable activity, we want to make sure our people have checked it out as far as they can go, and if they are not satisfied, not to say they are going to issue a licence, but to reserve on it and discuss it back in the office with me and our staff.

The incidents of the past two or three months have led us to do this. We have an investigator now working closely with our solicitor; he is a former investigator who worked for us. He is doing an excellent job in that regard. I am satisfied we will do what is required from here on.

11 a.m.

Mr. Breaugh:-A couple of-years ago we went over to visit people at the Ontario Police Commission and got a look at some of the equipment and the techniques they use. They appear to have a pretty sophisticated means of tracking individuals around Ontario. They seem to have a handle on that, and yet this kind of problem still seems to plague us. We seem to know what is going on but lack an ability to do anything about it.

Mr. Blair: One of our officials, our director, Bob Mills, in response to the question, "What do we do?"--I know this first hand--makes the observation, "With the advent of the Charter of Rights, police authorities are hampered in their ability to advise the board of information other than actual convictions."

A few minutes ago you heard me allude to the visit we had with the Mount Forest detachment of the Ontario Provincial Police in western Ontario. They had visited each of the municipal forces around there. I think without exception the municipal forces were happy to talk to them verbally at a meeting, but they did not want to put anything on paper. That is for special occasion permits.

I know some municipal forces are reluctant to say anything other than about recorded convictions, even though they may know something. They will say, "We have checked this individual out and we have nothing adverse to report to you." We had a meeting with the liquor legislation committee of the Ontario Association of Chiefs of Police about a month ago. They in turn confirmed that they do not mind talking to you in person but are loath to put anything down on paper.

Mr. Breaugh: I find it frustrating. From casual conversations with police officers, I know they know where, when and what, but I only see charges laid when some stripper gets beat up or stabbed or somebody gets mugged in the parking lot.

It concerns me there is this knowledge that there are illegal activities going on without prosecutions. At the other end of it, people who are simply riding motorcycles are getting harassed on the street by police officers as part of an ongoing program to put a higher profile to an investigation.

However, I do not see charges being laid, and I do not see the judicial system being used to clean up what they all agree is a major problem.

Mr. Blair: If you are confining those remarks to strippers and that type of thing, that is a police matter. As you appreciate, we do not get involved in the type of entertainment a licensed place has. We ask, "Are you planning entertainment, Mr. Breaugh?" "Yes." "What are you planning? What type of entertainment?" If there is a pause in response to that question, I know darn well what they are likely to end up with. Invariably, they come out with, "Country and western." My stock response to that is, "You are getting country girls from western Quebec." I think that is so in a lot of cases.

Nevertheless, that information is recorded for our purposes to tip us off that there could be a problem area. However, most of them are legitimate. If nude dancing is permitted, the type of nude dancing and that type of thing is a municipal affair.

Mr. Breaugh: It is also an area with a lot of greyness about it. In my community, for example, there was a place that started up as a sort of local restaurant. It then made a move to become the local strip capital, which enraged everybody else who lived and worked around the area.

Mr. Blair: I think I know the one you are referring to.

Mr. Breaugh: They went for a different type of licence and were denied by the board. It did not seem to make much difference.

Mr. Blair: We know quite a bit more about that operation and the individuals involved than we did when the licence was issued.

Mr. Breaugh: Let me go to a couple of other areas that concern me. Are you virtually out of all the fire safety and theatre stuff now?

Mr. Blair: Yes. The fire safety function was taken over by the fire marshal. That was the reason we lost so many personnel three and a half years ago. That was in the aftermath of the tragedy at the Inn on the Park Hotel.

When our people go into a licensed establishment and see something obvious, such as a blocked exit or exit signs burned out or that type of thing, they will report it to somebody. The major fire safety function in hotels and that type of thing now is done by the fire marshal.

Mr. Breaugh: What about movie theatres?

Mr. Blair: Mary Brown has two full-time inspectors. She got two a couple of years ago and I guess she still has them. Our people do not go into movie theatres, but they will check out the video equipment a licensed establishment has, and if it has not been authorized, we will do something about it. Just this week one of our inspectors in northern Ontario reported that he was given authorization to seize equipment.

Mr. Breaugh: Is there a need to rewrite the act and clarify who is responsible for what? It is a little confusing. I know a number of bars have videos now. In a sense they would be movie theatres with bars attached.

Mr. Blair: I do not think the theatres branch would consider that a theatre. I think you are right, there has to be some clarification and our people would like to get out of it. When you consider all that takes place in some of these licensed establishments, which the licensee thinks he has to have to survive, other than serving food and beverage, you get into other jurisdictions.

Mr. Breaugh: The act has some rather quaint language and I wanted to go through a bit of it. It says you cannot give a licence where the operator may be likely to promote the sale of liquor of any manufacturer. When I first read that it seemed rather strange, but I think it means you cannot sell a particular brand. Is that correct?

Mr. Blair: You cannot be involved with the manufacture of an alcoholic beverage.

Mr. Breaugh: How about our new domed stadium where, supposedly, one beer supplier is going to get preferential treatment: that is, there will be a licensed premise where you will be able to buy only one kind of beer?

Mr. Blair: I do not think that will happen. In fact, I do not read that stuff in the papers because it is all doing a little advocating and promoting by the use of news media.

Mr. Breaugh: It occurred to me that this touting of preferential treatment is contrary to the act, if you were able to buy only one kind of beer.

Mr. Blair: At Exhibition Stadium, Labatt's has the preponderance of beer sales. They own 45 per cent of the Blue Jays, whereas Carling O'Keefe owns 100 per cent of the Argonauts. Labatt's feels that because certain breweries in the United States own ball teams and sell their beer exclusively at games, it should do that in Ontario, but the answer is no. They had about 75 per cent last year and the rest was divided between Carling O'Keefe and Molson's.

Mr. Breaugh: How would it break down in practice? If they got any, would preferential treatment be confined to being the only beer company allowed to advertise in the stadium?

Mr. Blair: I do not think so. The Argonauts will be playing in the domed stadium and as long as Carling O'Keefe is involved, this is all a little show.

Mr. Breaugh: So there will not be a routine such as, you can buy any brand of beer but we have only Carling O'Keefe.

Mr. Blair: No, that would be like going to the international ploughing match and buying Labatt's because that is the only kind available.

Mr. Breaugh: There will be none of that.

Mr. Blair: We are attempting to make a change when that event moves to Elgin county in 1985.

Mr. Breaugh: It will clean up when it hits there, for sure.

Mr. Blair: With the amount of beer sold, the monopoly at that event is unreal.

Mr. Breaugh: Is there still an interdicted list?

Mr. Blair: Yes.

Mr. Breaugh: How active is it and how do you get people on it? How do you make that list?

Mr. Blair: Did you say you want to make it?

Mr. Breaugh: I am working on it, yes.

Mr. Blair: We would give you consideration. The interdiction list at the close of business in December 1984 comprised 754 names.

Mr. Breaugh: How did they get there?

Mr. Blair: Usually a person is recommended by a wife who has been beaten. That is the common thread. The police often correspond with us, asking us to give consideration to putting Mr. Jones on the list. It is usually the male.

Mr. Breaugh: Do not be sexist. I am interested in this because it seems to be a quaint Ontario law and I do not know how a bartender is supposed to know who is on the interdicted list.

11:10 a.m.

Mr. Blair: You are right. Its effectiveness, if there is any, takes place in small communities, where most people would know Mr. Jones has been a bad actor and the local post office gets a registered letter from our board, after a certain procedure hearing. We write and tell the person there has been a request to put him on the interdiction list and we are proposing to put him on, unless he objects. If he objects, he applies to us within 15 days and we have a hearing, the same as we have a hearing of a disciplinary nature for a licensee.

Mr. Breaugh: Do you actually have a hearing?

Mr. Blair: Yes.

Mr. Breaugh: How many did you have last year?

Mr. Blair: A lot of these are on without hearings. In December 1983 there were 709 on the list, in December 1984 there were 754, which is an increase of 45. That is the net increase, because there have been a few who have come off. We take a few off but we need to have good reason to do that.

Mr. G. I. Miller: How long are they left on?

Mr. Blair: They are on indefinitely, but we will tell them that if they buck up, we will consider the removal of their name from the list in a year's time.

Mr. G. I. Miller: Do they have to apply?

Mr. Blair: Yes, they have to apply; it is not done automatically. Then we report them to either an inspector or a doctor or someone. These are very delicate hearings, I can assure you.

Mr. Breaugh: Is this whole process worth retaining? Here is a process whereby somebody gets put on a list. I suppose 50 years ago you could identify the town drunk, you had one hotel and you went to the hotel and you said, "Do not serve this guy any more booze." In these days, does it make any sense to have this list?

Mr. Blair: I forgot to mention, once a person has been put on the list we circularize the area outlets, the beer stores, the wine stores, liquor stores and all the places where they can get it. Granted, and I agree with you, the barkeeper in a certain licensed place would not know Mr. Jones.

Mr. Breaugh: Or the cashier at the liquor store.

Mr. Blair: From my point of view, if this has brought peace and harmony of some kind to some families, it is worth it.

Mr. Breaugh: Do we have any indication that it has?

Mr. Blair: I think so, yes.

Mr. Breaugh: How?

Mr. Blair: When they apply to come off the list, we have a report from their doctor or someone else.

Mr. Breaugh: So in some cases, maybe moral suasion or whatever has convinced a person that he has a problem and should get help; he does and you take him off.

Mr. Blair: That is right. Canon Brightling, who is a member of our board and, as you can tell from his title, an Anglican clergyman, and I have been on several of these. He is terrific when it comes to counselling these people.

Mr. Breaugh: How many hearings a year did you say you had?

Mr. Blair: We put an additional 45 on last year but I do not think, from a hearing point of view, we had any more than 10 or a dozen.

Mr. Breaugh: This is kind of a quaint practice that might do somebody some good and, since it does not cost a lot of money, you leave it alone.

Mr. Blair: It does not cost a lot of money, no.

Mr. Breaugh: There are a couple of other areas that concern me a little. There is something in this world called stomach bitters, which I was not quite clued into. I went into the Bay store in Oshawa a week ago and they were selling something called champagne. I do not think it was champagne but it might have been something like this. Apparently there are little corner grocery stores selling liquids that have a fairly high alcoholic content.

Is this another piece of business from the realms of the past, where somebody has found another kind of alcoholic beverage and, as long as it is called stomach bitters or whatever, you can sell it in the corner store?

Mr. Blair: It is rather an interesting thing. This whole business of stomach bitters has come to the fore in the last three or four months--I am not saying it was not there before--but a lot of these convenience stores sell them. The Parkdale area in Toronto seems to be an area where they are very prevalent.

We knew this question was coming up so our solicitor made a few observations and perhaps I should just read them to you.

He says: "It is not the view of the board that the regulations with respect to stomach bitters be changed because of their alcoholic content. The board is of the view that enforcement of existing regulations under the Liquor Licence Act by local

enforcement agencies can resolve problems related to stomach bitters in those specific districts where they arise."

Section 43 of the Liquor Licence Act prohibits the sale of liquor, including stomach bitters, to intoxicated persons and also to underage persons. There is also a reference to the advertising.

Section 53 of the Liquor Licence Act provides for civil liability for sale to intoxicated persons which results in injury or death.

I do not know how many stores handle stomach bitters but I know there was one in the east end, when all this furore arose in the press, that apparently got out of it. It was not going to be worth the aggravation.

From our point of view, the legislation is there, if it is used. I think a few charges and convictions of people who were serving intoxicated people or minors would go a long way in taking care of the problem.

I had a rather interesting call on Monday this week from a lady whose husband was a friend of a person who was a victim of this. He had been in hospital and now was living in a nondescript rooming house, so the husband thought he would take his friend out for a good meal. He went to a restaurant in the Parkdale area. While he was in the washroom there, he found the garbage receptacle was filled with little empty bottles.

That is the first time a person has called me about that. It just happened to be this week. We are going to check out the restaurant--I do not know whether it is licensed--to see if we have any status there as the Liquor Licence Board of Ontario. We are conscious of the problem and we think gentle persuasion by the authorities will likely get rid of it.

Mr. Breaugh: You think it is basically a matter of enforcement of present laws.

Mr. Blair: I think so. Our people take that stance.

Mr. Breaugh: Okay. I have two or three other areas. There appears to be some case precedent being built up now that if a person serves a drunk more booze than he really needs and the drunk goes out and gets involved in a traffic accident, the owner of the establishment has some legal responsibility. I am not quite clear exactly how responsible, but that appears to be the case.

Are you doing anything to make owners of such establishments actively aware there is a legal responsibility now, or the chance of that?

Mr. Blair: Yes. I meant to say this earlier. When a new applicant comes along for his licence and a hearing is held, on the same day usually, in Toronto at least, we hold a seminar. One of our licence officers conducts a seminar for about two and a half hours. This is the type of thing they stress.

As you know, there was a case up in our chairman's riding not too long ago--

Mr. Breaugh: There is a lot of action up there these days.

Mr. Blair: That is right. They had to pay quite a sum of money. It was not a fatality; it was a paraplegic situation. Right on the heels of that, most of the licensed places in Ontario checked with their insurers to see if they were covered and for how much. I think there has been quite an increase in the liability coverage they have acquired.

I might relay a little incident. Last April I attended a symposium--that is a high-faluting seminar, I guess--in Banff that was put on by the Addiction Research Foundation over about seven provinces. We heard from a law professor who seemed to be paranoid about the fact that it would not be long, especially on the heels of this situation in Bright, before the Liquor Licence Board of Ontario would be included in an action.

Mr. Breaugh: That is right.

Mr. Blair: We checked this out and I took the position out there, as I do now, that as long as it is a right to acquire a licence, providing certain requirements are met, rather than a privilege, I cannot see how in the world we have any liability in most cases. There are still some jurisdictions where it is a privilege. It was at one time here, prior to this act coming in.

Mr. Breaugh: It is pretty obvious that somebody at some time is going to try that out in a court.

Mr. Blair: There will be an attempt. There will be a case, at some time, that will test the courts.

Mr. Breaugh: Is there much movement, or even discussion, at the board in regard to changing the nature of who can sell spirits, beer and wine in a corner store or the idea of the pub that has a brewery attached to it and sells one brand of beer or specializes in that? There has been a lot of discussion lately about all that. Is it under active consideration by the board?

11:20 a.m.

Mr. Blair: The Liquor Control Board of Ontario deals with the commercial end. To my knowledge it is not giving active consideration to having grocery stores sell it.

Mr. Breaugh: You do not consider that in the foreseeable future you will be licensing the corner store to sell beer.

Mr. Blair: No.

Mr. Breaugh: What about the other aspect, the little brewery and pub?

Mr. Blair: That is being actively considered. I visited a brew pub out west. There are few in Canada. I think Manitoba has one or two. The one I visited had an old-style pub, one of those two-storey frame buildings you see in movies. It was quite an interesting place. The owner built a masonry construction building about 40 feet from his pub and acquired a lot of obsolete dairy equipment, put in vats and so on, and made beer there.

He was a young fellow of about 28 or 30. We asked him who made the beer. His sister was the brewmaster, brewmistress or whatever. She made about two batches a week and they piped it in. They had a vat with a measuring device so the government could get its percentage. There was an underground plastic pipe to the tap in the pub.

I had a sample of it. It was wet and cold. It was all right because it was a warm day. It was not carbonated like some others. I guess they were sorting things out. They intended to make two types of beer. They were selling their own brand at 90 cents a pint and they were charging \$1.35 for the kind brought in from recognized breweries. I do not know the time over which he intended to amortize the cost of setting it up.

Then we get to microbreweries that might want to supply several outlets. The number of breweries in Ontario is not great. One opened in Kitchener just before Christmas. Some of you may have heard of it. There may be others.

I might say another thing regarding beer because one thing reminds me of another. We are establishing a quota system for the breweries for the draft business. There has been too much hanky-panky going on with breweries attempting to buy out long-term contracts for supplying draft beer. The rule in Ontario is that a licensee can get away with selling only one supplier's beer, whereas the bottled beer and cans have to be of the brands generally consumed or available in the area.

To beat this off, we agreed last week on a system that will establish a quota. This afternoon letters have been going out asking the licensees to name their first and second preferences in beer. Most of them will be accommodated, but there will be some that have to take a third choice. It will head this off. The competition in the brewing business is keen, to say the least.

Mr. Breaugh: What about advertising? It seems to me we always get stuck with ridiculous regulations. When we had a happy hour, for example, you could advertise the happy hour but only on your premises. I do not understand how we get stuck with such ridiculous regulations. How does that happen? I am sure it is all very calm and rational.

Mr. Blair: I think you could advertise outside that you had a happy hour, but the price you were charging was kept inside.

Mr. Breaugh: Why?

Mr. Blair: It was felt it would be another competition. The thing got out of hand. As you likely know, happy hours were

introduced to appease licensed places on the border between here and the United States and perhaps in the Ottawa-Quebec situation. They were advertising happy hours in the papers in Ontario right under the noses of our own licensees, so they felt hard done by. The thing they did not realize at the time was that in the United States licensees can make a deal with the supplier of the product and get lots of discounts and lots of sales, depending on where they are and who they are. Over here they have to buy the product through the recognized outlets: Brewers' Warehousing for beer and the Liquor Control Board of Ontario outlets for their spirits. That did not work out and people were abusing it.

You probably saw where I was quoted in the paper as saying I did not realize there were so many damned fools in the licensing business until I saw they were offering a drink for the regular price and the second drink for a penny. That did not work out. I guess it was inconsistent with the drinking driving program to allow the happy hours or the abuse of them to continue, so that is not fair.

You mentioned advertising. To determine what is acceptable and what is not is one of the most difficult jobs we have. Depending on who you are and where you are at, what is lifestyle advertising? It is generally recognized that advertising has very little, if any, effect on the consumption of the product. You can go from one extreme to the other and use any example to prove a point, but I understand from a pretty good authority that the highest consumption per capita of the alcoholic spirits is in Russia and no advertising is allowed.

In the business section of this morning's Globe and Mail there is an article headlined, "Beer, Wine Ads Studied." I did not see it but the article was brought to my attention in the office. In fact, it is large enough to pass around. It says: "International studies that attempt to link beer and wine ads on radio and television to alcohol abuse find the relationship is slim to none." That is what we have been told all along.

Mr. Edighoffer: Who wrote the article?

Mr. Blair: I do not know.

Mr. Edighoffer: It is from one of the beer companies?

Mr. Blair: You can pass those around in case you missed it.

Interjections.

Mr. Blair: One of the last jurisdictions in this country to allow advertising was Saskatchewan. It was in the last couple of years with the present government of Grant Devine. The consumption there was greater than in most other places. The consumption there is beer because spirits ads are not allowed on the television. The event that you see has to have taken place before you sit down and enjoy a bottle of beer.

Granted, a lot of these activities that are recreation oriented are bordering on being a little dangerous. People could read into this that if they had a bottle of Carlsberg Light, it will enable them to do certain things. That is always the danger we have.

Mr. Breaugh: The concern I have is that there seems to be so much silliness involved. Does all this advertising money go out? Every study I have ever seen says if it does anything, it might bump your share of the market around a little bit but it does not increase consumption.

Mr. Blair: Brand preferences.

Mr. Breaugh: Brand preference. We spend all this time and effort arguing. We say you can have the ad, but you cannot drink beer on the ad or you can only introduce the product after you have had the event. We actually have people who sit around deciding who Molson's, who put their name on a sport bag, can give the bag to; whether someone else can do key chains or bottle openers. I am not convinced that any of this is a worthwhile activity for human beings to be engaged in.

Mr. Blair: You mean in trying to prevent.

Mr. Breaugh: I am not even convinced it is worthy of the time. Why are we interested in whether Molson's puts its name on a sports bag and how it does that? Why do we care whether Carlsberg makes a key fob or not? Why do I care whether Carling has a beer tent that it will lend out to a community group and whether it will put its name on the side of that tent? Why is this of concern to me? I am not sure I see any rational excuse for the whole exercise.

Mr. Blair: Some of the things you cannot explain. I suppose there is a historical background to most of these.

11:30 a.m.

Mr. Breaugh: When you talk to people who are working in the industry, I would say one of their prime aggravations in life is how to get this promotional idea approved by somebody. Then you go through the whole exercise of why something gets approved and something else gets turned down. I honestly do not know why we are bothering with all of this. I do not see why the world needs advertising for beer on television. Why bother? Even from the company's point of view, why bother?

Mr. Blair: The practical answer is that we would not have a lot of the National Hockey League teams in existence or--

Mr. Breaugh: That proves my point.

Finally, I would like to talk about inspection. It is another wonderful aspect of life in Ontario that there are things called liquor licence board inspectors. I have met a few. They are usually sitting in the corner of the room reading a newspaper,

enjoying their meal and watching what is going on. I would like you to give us some background on how one gets to be a liquor licence inspector. There seems to be a lot of innuendo that this is what a person does when he has run for the Tories and lost. What does an inspector do?

Mr. Blair: Do you know of any Tories who have run and lost who are liquor inspectors?

Mr. Breaugh: No, I do not, just friends. At the beginning today you said you had gone from an annual inspection to a biennial one.

Mr. Blair: That is the direction we are heading. I do not know whether we have got there yet.

Mr. Breaugh: What is the basis of your inspection program? What is an inspector supposed to do? What is the on-the-job experience? I am a little mystified as to what these people do.

Mr. Blair: There are various things they do. Very often they take a new applicant by the hand and guide him through the process to get his licence. We have an initial inspection. If you were to apply for a licence at such and such an address, you would apply, and then our inspector would make a preliminary inspection to see if your place qualifies, if it is there to start with.

Then he will establish a relationship with the applicant. Prior to the licence being issued, following the hearing at which he has been given approval, a letter will go out to the inspector and the applicant. Then he will gather the municipal letters of compliance and so on to make sure everything is done according to Hoyle.

He will act as the voice of the Liquor Licence Board of Ontario. Around Toronto it is not so important to have inspectors from that point of view, but in the rural areas, in northern Ontario especially, the local inspector is the LLBO. He makes sure people obey the rules and regulations. If he finds they are getting out of line, he will warn them, tell them what they are doing wrong. If they persist in doing it, we will likely hear about it and propose some remedial action to get them in line or revoke the licence.

He gets a copy of the special occasion permits, and if time permits--most of these functions are on weekends and he can cover only a certain number--he will see if they are carrying out the rules that are laid down for the operation of the event.

Mr. Charlton: How many of the special occasion functions would they cover on a percentage basis?

Mr. Blair: That is a good question.

Interjection.

Mr. Blair: About five per cent, they tell me. We are changing the work hours of these people so they can catch a few more.

Mr. Charlton: The police also check out those application permits, do they not?

Mr. Blair: They get a copy of the permit too.

Mr. Breaugh: The mystery surrounding this seems to be that a liquor licence inspector has a lot of power. The kind of complaint I get is usually from a person opening a bar or restaurant. This guy comes in and tells him what he has to do. There is a long list of people who are telling him what he has to do. I get complaints at that end.

On the special occasion permits, many people have major community events that involve liquor licences. They live in fear that someone will arrive in Oshawa just before Fiesta Week and say to all the people who run pavilions that they have to provide certain kinds of seating, a certain number of washrooms, a certain sort of kitchen space, etc. There is an implied fear there.

I do not recall a complaint from anyone about the work of an inspector. Aside from starting up an establishment, the fear of the visit of an inspector seems to be what is used, not the actual visit. You cover five per cent of special occasions?

Mr. Blair: Yes, of special occasions, but the regular licensees, unless they have an excellent reputation and have good personnel, will be visited quite frequently by our people in response to complaints. Our inspectors in the outlying areas get complaints about minors drinking, usually in a hotel, often at a high school graduation party or Christmas party. We have had considerable problems with those in certain areas and the inspectors go out. In some areas they phone the police and are accompanied by them because the police can lay a charge or issue a summons under the Provincial Offences Act to the minors.

Mr. Breaugh: Is there a systematic inspection program at work here?

Mr. Blair: Yes.

Mr. Breaugh: You are now saying that probably in the foreseeable future at least once every two years an inspector will visit every licensed premise in Ontario?

Mr. Blair: And he will visit a great many more frequently than that.

Mr. Breaugh: When he had reasonable grounds to believe there is some violation of the act, what is the procedure?

Mr. Blair: He will report to his manager or he will put it on a form. That may require one of our investigators to go out and monitor, for instance, the food-liquor ratio or that type of

thing. We have an investigation staff of six, plus a supervisor, who go out and do the monitoring.

Mr. G. I. Miller: Do you call out the flying squad?

Mr. Blair: They do not have any geographic area and we do not want them to have one because we do not want an inspector known. Lloyd Brown is the man down in your area, and because he is a resident, he is known to them all. But we do not want Steve Holubko, for instance, who is one of our investigators, to be doing your area all the time because he would be known when he walked in.

Mr. G. I. Miller: We had a complaint from two local establishments in Simcoe about an inspector who came. They were upset at the manner in which he came. They did not mind the inspection, but it was done in front of the customers with a show of authority. They were very concerned about that approach. As a matter of fact, I think he took half a bottle of scotch that did not measure up to the 40 per cent it was supposed to without giving a receipt for it. They were quite upset about that. They bought it at the liquor store. Since that time I think the LLBO has agreed to return it. To my knowledge, I do not think they found any negligence.

Mr. Blair: I think I know exactly what you are talking about, Mr. Miller. We have had a lot of complaints, and we still get a lot, about the smuggling in of American spirits.

Mr. G. I. Miller: I assume there was good reason for this inspection.

Mr. Blair: They were alerted by a certain police organization to go to several establishments in your area. Unfortunately, it was a bum steer in a couple of instances. Everything was all right. There is no excuse for this approach. Usually, if that is the type of thing they are looking for, they will go in at a very quiet period on such an operation.

Mr. Charlton: Did they find any establishments in the area that were actually using illegal liquor?

Mr. Blair: Yes, I guess there were some. There were also some with watered-down liquor. People put a cheap brand of rye in a Crown Royal bottle or watered down the scotch.

Mr. Charlton: What is the name of your riding, Gordon? Smugglers Cove?

Mr. Watson: What is this about your riding, Gordon?

Mr. Blair: I do not think Mr. Watson should get too (inaudible).

Mr. Watson: The only thing is we do not get it by boat. We get it by the truckload.

Mr. Eichmanis: Could you indicate how many inspectors you have and what the breakdown is between, say, Toronto and other urban areas and the rural areas?

Mr. Blair: We have 48. We should have 50, but there are two vacancies right now.

Mr. Eichmanis: You have 48 inspectors?

Mr. Blair: Yes. We have two managers, a supervisor and a director. There are about seven or eight in the city of Toronto and then half of those people in the area from Burlington around to Oshawa.

The number of calls they have depends on where they are located. Some of them might have 180 and some might have 250. I know in Ottawa, with the Rideau Centre development, one of our inspectors there has more than 300; we are thinking about an extra inspector down that way.

Mr. Eichmanis: So you only have eight for Metropolitan Toronto?

Mr. Blair: No. Just the city of Toronto.

Mr. Eichmanis: And then 20 for Burlington to Oshawa? About 28 altogether?

Mr. Blair: I would say that. Yes.

Mr. Eichmanis: Thank you.

Mr. Breaugh: I have one final observation. It would appear to me that the Liquor Licence Board of Ontario is loosening up its regulations. For example, I went to the home show down here two weeks ago, and there was a bar right in the middle of the home show. I walked by it, and I thought: "This is not right. In Ontario, when you are going to drink you get herded off into a little section over there; they do not actually have liquor right out here amongst women and children." My God, how does this happen?

Mr. Blair: It should not have happened.

Mr. Breaugh: It should not have happened? That is what I thought.

Mr. Blair: Our director of licensing was there the first night, and he came in to see me the next morning.

Mr. Breaugh: So that actually was an illicit operation? I am glad to see there is--

Mr. Blair: It was a standup, portable bar.

Mr. Breaugh: That is right.

Mr. Blair: I was not there, but I know who was behind the operation of the show. I guess you do too. As soon as I heard that, it meant quite a bit to me.

Mr. Breaugh: I have some faith that we are still back in the dark ages here.

Mr. G. I. Miller: I think you indicated you were having some problems with the junior farmer organizations in some areas of Ontario--

Mr. Blair: From Perth north.

Interjections.

Mr. G. I. Miller: I suppose young people in the country are no different from young people in the town; they do like to have a good time, they like to celebrate and enjoy themselves too. What happens when the permits are issued? Are they not inspected? Usually in our area, once you have a special occasion permit, they come in and inspect. Does their report come back to your office?

Mr. Blair: Yes. They report back to their superiors.

Mr. G. I. Miller: How do they control to make sure that they are 19? A concern we all have is that the drinking age has been raised to 19. Is that being maintained and protected?

Mr. Blair: As much as possible. The unfortunate part is that the junior farmers may have one function a year, and it will be the president or the secretary of the group or whoever is designated to do it who applies for the permit; next year it will be somebody else. Unfortunately, they do not understand all the rules and regulations, and some of them are doing certain things quite innocently, I suppose without knowing what the implications are.

Of course, often they are fund-raising events, and the more beer they can process there, the more money they are going to get for their activities. That is the problem.

Mr. G. I. Miller: Are they fund-raising events? I do not think they are fund-raising events all that much. But I guess from your experience, we will have to accept that.

Mr. Blair: As soon as we clamp down, which we started to do last fall, we get letters saying they require that money to operate. You can see the teardrops on the letters we get from them.

It is not easy, but if it is a fund-raising event in your riding, the local LCBO store cannot issue it without consulting us or our people at head office if minors are going to be admitted. There is a questionnaire type of thing: "Are minors to be permitted? Yes or no." Of course, word will not take too long to get around: if you want your permit, you put down "no." But that does not necessarily mean it is "no" at the door.

Mr. G. I. Miller: So there is no actual control; it is up to the individual organizations to do that.

Mr. Blair: Yes.

Mr. G. I. Miller: I guess the other thing that concerns me is the advertising, which I believe was mentioned here this morning. Going back to our younger days, Bee Hive Golden corn syrup was the thing advertised. I do not know whether you go back that far.

Mr. Blair: Yes, I do.

Mr. G. I. Miller: We used to eat lots of Bee Hive corn syrup so we could be good at athletic endeavours. Now it seems to be beer ads that are prevalent and you cannot have a good time without beer. That is a concern. We have met with a local group back in Simcoe about it. It was brought out by the then Attorney General just before Christmas, when driving and drinking was an issue, that there is strong evidence that a lot of hardships are created by drinking and driving. I wonder whether that is a concern of the board.

Phil Esposito is a retired hockey star. He is promoting a fund for hockey players who have problems adjusting their lifestyles after getting out of their hockey careers. It is basically built around the fact that they cannot get away from using alcohol or drugs. It has been an issue the past few weeks where a hockey player indicated he has been fighting it; he received a lot of publicity.

That is a concern I have. I am always amazed at the amount of dollars being spent on drugs, and yet there does not seem to be any effort to control that. I do not want to get into that since we are talking liquor and your function. As one who went to school and played sports all his life, it is hard for me to understand how young people have to depend on that for a crutch. I always think a young person has lots of time and has the best time without all those things to stimulate him.

I wonder what your views are and how you feel it might be combated.

Mr. Blair: We have to operate within the framework of our act. However, as citizens of this province we are conscious of what goes on, and in interpreting the rules, what we advise people who come before us has some consistency with the background.

I am digressing a little, but there is a particular service club that operates in Ontario; I should not generalize. They meet every other week and they think they cannot have a meeting unless they have a licence to sell alcoholic spirits to their members. I tell them as a service club member for quite a long time, about 27 years, that we do not have it and would not have it, except on Saturday night or ladies' night two or three times a year. That is a little friendly advice I give them, and they do not appreciate it lots of times. They think I am in the business of promoting the sale of booze, which I am not.

Mr. Cureatz: Does that mean you cut them off from a licence?

Mr. Blair: If they can qualify for a bona fide licence, it is all right; but in the main they cannot and we just say, "No." If they are genuinely interested in serving their community, I do not think they have to have, as Mr. Miller says, the crutch of an alcoholic beverage to do their work.

Although I am on this end, I cannot disagree with your approach. However, living in these times, where values and mores change, we try to make the best of it.

Mr. Hennessy: Has any thought been given to the corner store? There has been a lot of talk over the past two or three years about selling beer or liquor there.

Mr. Blair: I mentioned that earlier. I guess that question arose when you were out. That is an Liquor Control Board of Ontario item, and as far as I am concerned, they are giving no consideration at all to it.

The committee recessed at 11:50 a.m.

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STANDING COMMITTEE ON PROCEDURAL AFFAIRS

REVIEW OF AGENCIES, BOARDS AND COMMISSIONS:
LIQUOR LICENCE BOARD OF ONTARIO

WEDNESDAY, FEBRUARY 13, 1985

Afternoon sitting



STANDING COMMITTEE ON PROCEDURAL AFFAIRS

CHAIRMAN: Treleaven, R. L. (Oxford PC)
VICE-CHAIRMAN: Watson, A. N. (Chatham-Kent PC)
Breagh, M. J. (Oshawa NDP)
Charlton, B. A. (Hamilton Mountain NDP)
Cureatz, S. L., (Durham East PC)
Edighoffer, H. A. (Perth L)
Kells, M. C. (Humber PC)
Mancini, R. (Essex South L)
McNeil, R. K. (Elgin PC)
Miller, G. I. (Haldimand-Norfolk L)
Rotenberg, D. (Wilson Heights PC)
Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Substitution:

Hennessy, M. (Fort William PC) for Hon. Mr. Kells

Clerk: Forsyth, S.

Assistant Clerk: Decker, T.

Staff:

Eichmanis, J., Research Officer, Legislative Research Service

From the Liquor Licence Board of Ontario:

Blair, W. L., Chairman

Boukouris, P., Director, Administration Branch

Flowers, J., Executive Director

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON PROCEDURAL AFFAIRS

Wednesday, February 13, 1985

The committee resumed at 2:07 p.m. in room 228.

AGENCIES, BOARDS AND COMMISSIONS:
(continued)

LIQUOR LICENCE BOARD OF ONTARIO

Mr. Chairman: I see a quorum. We will begin.

Mr. Watson: There were a couple of things I want to clarify. I guess one of them arises from a certain incident in Chatham where there was an accusation and a court case and there was a "found not guilty" situation. I recall that the inspector did not seem to have authority to go in, and the evidence in court was that a search warrant had been obtained after the fact. People have asked me, what good are our laws if you have to have a search warrant to go in and gather evidence, or was the evidence not properly presented? Can you straighten the record on that situation?

Mr. Blair: As far as we are concerned, our inspector or investigator has full authority to go in and inspect the premises and the books. Normally it is our investigator, one of a group of six or seven, who does that. He gets specific authorization from me to inspect a premises. He presents this to the licensee, usually after he has been down the night before as a patron, kind of casing the joint, as they say. Then the next day he will walk in at 11 o'clock or whenever the place opens and present his letter.

Under our rules, he is supposed to have access to all the books; to the kitchen, to see if they are equipped to prepare the meals they say they are preparing and serving; to the inventory of alcoholic beverages, including their storage room, to see what they are doing and to see if the merchandise they are acquiring has come from the local Liquor-Control Board of Ontario store or the one where they are supposed to get it, which would be the warehouse here in Toronto; and to anything else.

When we go in and catch the people by surprise, their accountant is always on vacation. I have never heard of so many accountants as there are in this province who have licensed establishments as clients and who are invariably on holiday, but that is what we find. That means a return trip and so on. But we have the authority to go in there and check it out.

I knew about this case before, and we tried to get an extract of the judge's comments, but we do not have that yet, to my knowledge. The solicitor was to get them. It is our opinion that the judge was in error in saying that our inspector had to have a search warrant.

Mr. Watson: Your inspector cannot lay a charge; is that right?

Mr. Blair: That is right. I do not know whether it has been regularized, but recently our investigators have become officers under the Provincial Offences Act. Our inspector, who is there without that type of backup, will either phone the police or go in with the police.

Mr. Watson: Would the police have to have a search warrant?

Mr. Blair: No.

Mr. Watson: I do not have the facts in front of me, but I understood that was one of the the bases on which the case went down. I think it is a fact that they did go and get a search warrant after they had been there.

Mr. Blair: After they had been there; that would lead one to believe that was an admission that they should have had one in the first place.

Mr. Watson: That leads me to my question: Should they have had one in the first place?

Mr. Blair: No.

Mr. Watson: You say no. So I am no wiser now.

Mr. Blair: We had a case in Markham, at Studio 134, which is still there. I am using that case to illustrate another point. Our inspector went in there the night before and looked the place over as a patron, when he was not suspected; then he went in the next morning at 11 o'clock and wanted to do certain things. He was shown the door, given the boot and told that he would be interfering with the preparation of meals if he went into the kitchen and that he would be interfering with the transaction of business if he went near the cash register to see how they were registering sales.

He came back down to the office, and we issued an immediate suspension order. He went in company with York regional police at six o'clock that night and served it. This was an exotic dancer place, and of course the customers all went out.

The next day the proprietor opened for business without his licence, and I got a phone call about it. The police went down with a marked bill, went in and made a purchase and they had him then. They wanted to check his whole inventory and knew, by talking to our investigator, where the storage was. He had terrific stock in there. They were told they could not go in there, to keep out, that it had nothing to do with liquor. All they did was go out to the car and radio up to headquarters and get a search warrant prepared. It was delivered, and as soon as he saw the police would break the door to get in, he opened it and they found what they wanted.

We have to be one jump ahead of some of these people, but our people knew exactly what the story was, although they do not have the power to lay the charges.

Mr. Hennessy: What were the problems there?

Mr. Blair: This was a dining lounge licence.

Mr. Hennessy: What are the problems with regard to the accounting and such?

Mr. Blair: Many of these places will have two sets of books. They have to submit their food-liquor ratio figures to us, unless their history is such that they are well above what is required. They will send the figures in to us, and it is amazing the number of places that have 41 per cent food and 59 per cent liquor. If you are going to cook the books instead of the food, surely you could do a little better job than that.

Mr. Hennessy: What are the percentages?

Mr. Blair: At least 40 per cent in food and no more than 60 per cent in alcoholic beverages.

Mr. Hennessy: Do some of them upgrade the food, sell less food and more liquor?

Mr. Blair: Oh, sure; all the time. We have difficulty getting their books. Their accountants are always on holidays.

Mr. Hennessy: On holidays in the office.

Mr. Blair: They are to be kept on the premises or close by. They have to be kept in Ontario by those doing business in Ontario, such as the alcoholic beverage industry.

Mr. Hennessy: It cannot be in Quebec or somewhere else.

Mr. Blair: We had a little difficulty with one prominent distiller who said the books were in Quebec and they were not to be reached by us.

Mr. Hennessy: Are they still in business?

Mr. Blair: They are. We have the books too. Mr. Boukouris can tell you about that one.

Mr. Eichmanis: Are you talking about section 21 of the act?

Mr. Blair: Yes.

Mr. Eichmanis: Under clause 21(2)(a) it says, "Upon production of his appointment, enter at any reasonable time the premises of such person, not including...and examine books, papers, documents...." In effect, you are saying that you do not need a search warrant under this section of the act, and the judge says you do.

Mr. Blair: The learned judge in charge said we need a search warrant.

Mr. Eichmanis: Although this section of the act says you do not.

Mr. Blair: That is right.

Mr. Breaugh: Should that part of the act be clarified?

Mr. Blair: You could clarify it for that one judge at least.

Mr. Watson: I know that the people who spoke to me, and I get it from the newspaper, are very confused. A number of people say to me: "Whether the man is guilty or not, I am not going to judge it. If that is the reason your inspectors do not have the authority to go in and search or investigate, then you had better pass some legislation that will give them that authority."

Mr. Blair: As far as we are concerned, we have it now.

Mr. Watson: Okay.

Mr. Blair: The more detailed investigation, what we call a monitor, is done by the investigators. They are well trained in that. They are good at reading books. They know the whole business. They cannot be fooled easily.

Mr. Watson: The thing that was rather confusing, and it was added to when it came out in court, was that they got the search warrant after they had been there.

Mr. Blair: Somebody made an error.

Mr. Watson: I do not know why that was done.

To change the subject, in terms of special occasion permits in rural communities, if the ushers' club in Paincourt wishes to have a little do in the basement of the church to raise money for baseball or something, it gets its special occasion permit without any trouble. However, when King Grain half a mile down the road builds a new warehouse and wants to have a dance there, your people say no because it is a commercial building. What is the difference? How do I explain to the people in Dover township the difference between a church basement and a new warehouse down the road?

Mr. Cureatz: Mike Breaugh, Andy Watson and Sam Cureatz are beginning to see eye to eye on it.

Mr. Blair: If in doubt, some of our people say no. They think that decision is right. If the facility is not registered with us, they will find all kinds of reasons. They will want a fire inspection, a health report and all the rest of it. In many instances that is construed by the applicant as a form of harassment; we throw up all kinds of obstacles.

Personally, I see nothing wrong with special occasion permits. They are usually for social events to defray the cost of the product.

Mr. Watson: The intent was to do the same thing. They were told, "If you do it in the church basement, that is fine; but if you do it in the warehouse, you cannot do it." In that instance, the reason they wanted it was that it happened to be new. It was going to be used the rest of the year. It was only going to happen once in that case. The reason was it was a commercial building.

I was told that it has to be the same for us as elsewhere and that if you had it here in Toronto you would have some people opening up a new commercial building every day to get it.

Mr. Blair: You are saying this was just for the opening of the building?

2:20 p.m.

Mr. Watson: It was for the opening, but they wanted to give it to the local church group to raise money for sports and things it does in the community. If it had been a free bar, there would have been no problem. If the people had come, there would have been no problem.

Mr. Blair: Are we are talking about two different setups here? We are talking about the permit that was asked for and was issued for the pubs in the church. Are you talking about some other commercial building? Am I hearing you right?

Mr. Watson: I was talking about a commercial building. King Grain Ltd. opened one of its warehouses where it stores seed corn.

Mr. Blair: It wanted a one-shot deal.

Mr. Watson: It wanted to say to the club in Paincourt: "There is going to be a crowd of people here. If you want to do this, you can do it because all the money is going to go into our community anyway."

Mr. Blair: So they had somebody from the church do the catering; is that what you mean?

Mr. Watson: Yes. They were going to have the people from the church do it.

Mr. Blair: I do not see anything wrong with that.

Mr. Watson: I did not see anything wrong with it either, but it was a no-no because it was a commercial building.

Mr. Blair: That was not the Presbyterian Church, of course.

Mr. Watson: This is quite some time ago. I am a little wiser now; I know more people. But I was told that if it had been free, it would have been all right. If it had not been a commercial building, it would have been all right. But this was obviously a commercial building, and you would not give a permit to sell in a commercial building.

Mr. Blair: I know our people have said no. If it had been me, I would have said yes. You can take it from there.

Mr. Cureatz: We will call you with all our problems.

Mr. Watson: On the other side, I see the practicality of it too. I realize it may be difficult to devise regulations that are applicable in Toronto and in rural Ontario. But where you have a known group and everybody knows each other, there is a different atmosphere than there is when you are trying to run it for business.

Mr. Blair: That particular building probably had a room that was obviously suitable; it has the washrooms, exits and all that business. We write all that down on paper before we consider it.

We had a case in Ottawa not too long ago. It was a book merchant in Ottawa who regularly, almost once a week or certainly twice a month, was featuring the books of a certain author. He had a small store and very little room to congregate and no facilities to accommodate a special occasion permit. He got tripped up by the police for not having a permit.

Then the news media, when things were slow down there in between sittings in the House, phoned us for some stories. They wanted to know if we would have issued a permit. Our inspector checked it out and the answer was: "No, we would not issue it." Obviously the book merchant knew we would not issue it; so he took his chances and got caught.

That was strictly a promotion for himself. We would not go for that anyway. If it were the big opening of a new store, or an addition or something, that is another story altogether.

Mr. Watson: Let us get back into the regulations that you operate under. Apparently you do not have any trouble if the people are going to give liquor away. There is no problem getting a permit.

Mr. Blair: It depends on where it is. They have to satisfy us about the fire and other facilities. Otherwise, a social permit is less of a problem. If it is a fund-raising thing and they say so, there is a place in the application to indicate it; then we start getting a little more particular. But if it is just a charge to defray the cost of the product, we have no difficulty with that.

Mr. Watson: They were going to give it to a local group rather than hand it out to say they wanted it as a fund-raising event. I can visualize the difference where people might hold it in a commercial building, but the official reason at that time was that this was a commercial building. It was going to be the opening of a commercial establishment, and you cannot sell liquor for a fund-raising event. We have had others.

I sympathize with you turning those down in terms of an established business that wants to give the local Kinsmen the

opportunity to run a cash bar while they have their sales pitch night. I have had those turned down and I understand why. The argument I always get is, "You give these permits at the ploughing match and this is the same thing." I have to say it is a different thing.

Mr. Blair: A ploughing match is a different league.

Mr. Watson: Yes.

Mr. Blair: The local ploughmen's associations that apply for a permit are usually restricted to two, plus maybe the board of directors. They have a hospitality suite or whatever. It is usually two service clubs. Last year in Teviotdale, I think it was the Lions and the Knights of Columbus. Sometimes it is the Shriners and that type of group. There are usually two great big tents, for which a very sizeable rent is extracted, I might say. If they have a wet day or two during the five-day period when the ploughing match is on, you can see why they are serving minors, which they do regularly, in order to get in the revenue.

Mr. Watson: I have been on the other side of that. At one time they could not have any tents at the ploughing match. One of the biggest problems they had was cleaning up the bottles from the ditches because people brought them along. Now that is a relatively minor problem. Why drink illegally if you can drink legally? They do not bring bottles and you do not have as many thrown out in parking lots.

Mr. Blair: You had licensed tents when it was in Chatham, did you not?

Mr. Watson: Yes, we had three. It was an interesting story, but that is another tale.

Mr. Blair: I was there that year for one day when I was a member of another board. I was not looking at it with the same pair of eyes.

Mr. Watson: If all the international ploughing matches ran as well as the one in Chatham ran, weatherwise and organizationwise--

Mr. Cureatz: Are you looking for another one?

Mr. Watson: No, we are not in the bidding.

Mr. Blair: Your friend to your right is hosting the next one.

Mr. Watson: Yes, I understand our friends to the left are making a bid for it down in Essex. They would like to have it down in that corner again, but that is a subject for the convention in Toronto next week. One of the things our committee wants to do is to be able to recommend whether changes are needed in the legislation in order for your board to operate more efficiently or effectively than it is now doing. Do you have a shopping list or wish list? I would hate you to come with it and not have the opportunity to present it.

Mr. Blair: I did not come with it, but I do have several things. The special occasion permit section in the regulations is going to have top priority for the various reasons we have discussed. There are a few other things I would like to see. We need an adjustment of the licence fee structure. If I am asked at our Canadian association what the licence fees are in Ontario, I always tell them I will send them a memo. I am ashamed to tell them in public in a loud voice.

Another thing we need is a catering licence. Paul and John are familiar with this. There are a number of people who have licensed premises and good food operations and would like to have a licence to cater to a wedding, or whatever, in a community hall and use their bar stock. One of the bugaboos about a special occasion permit is that you are supposed to return the unused full bottles. That is a nuisance. Usually somebody buys them or takes them home--I do not know about buying.

Mr. Watson: The government gets paid for them.

2:30 p.m.

Mr. Blair: Yes, but they are supposed to be returned. A caterer could do the job, provide the food, the booze and everything else. He is experienced. On the other side of the coin, he is usually in a position where he has more to lose if he does not obey the rules. The problem with many SOP functions is they are one-shot deals. You are either ignorant of the rules or you could not care less because it is a one-shot deal--"Goodbye, I will not be doing this next year"--so we think there is merit in having a catering licence.

Mr. Watson: Can we deal with the catering licence for just a minute?

Mr. Blair: Yes.

Mr. Watson: Would you put some conditions on that, such as the food being a much higher percentage than, say, the 40-60? Would that be one of the conditions in order to maintain it?

Mr. Blair: Those catered events usually have a higher percentage of food.

Mr. Watson: I quite agree. But on the other hand, if I can get a catering licence to run around and set up bars, I could serve pretty expensive hot dogs.

Mr. Blair: No. He would pay a licence fee for that privilege, but he would also have to apply, as I envisage it, or let us know that he is catering to Andy Watson's daughter's wedding.

Mr. Hennessy: Would he have a licence for the year? Would he have to notify you of each function?

Mr. Blair: We have not worked out that detail--we are working on it--but he would pay a licence fee per year, yes. We

envisage something such as Nova Scotia has. We pick the brains of other jurisdictions, and there you have a \$150 fee.

There are some food operations like this. Eddie Escaf in London is one who likes to do it, and of course we know Lawrence Bingeman in Kitchener and a few of those big operators. I think there is merit in having a catering licence. That would also somewhat appease the concern that the hotel-motel association people have about losing business to others.

The other thing I would like to see, and it is not unanimous around our place, is a little relaxation on Sunday for the theatres. The Centre in the Square in Kitchener is one case in point, as is Roy Thomson Hall in Toronto, where they serve beverages before the performances and at intermissions. But unless they have a dining lounge licence, they cannot do it on Sunday. We all know that a lot of these performances take place on Sunday.

The last time I was talking to the people at the Centre in the Square in Kitchener I learned that there are about 36 Sundays out of 52 when they have a function there, and they do not have a dining lounge licence. O'Keefe Centre does, and there is a little stretching of the imagination there to allow them to serve drinks during their Sunday performances. I think something could be done there.

Roy Thomson Hall is very anxious to get this regularized because of who they are and everything else, and there is a move afoot to have that done.

Mr. Hennessy: Do they have a special occasion permit for three hours only?

Mr. Blair: No. On a Sunday, you are supposed to have food with it.

Mr. Hennessy: Right.

Mr. Blair: They do not have anything. The last time I was in the O'Keefe-Centre they had a couple of sandwiches sitting on the counter, and I did not have the nerve to go over and feel them to see how old they were.

If something is going to take place, I am one of those who believe, as I am sure you people do, that rather than just wink at it, if you can adopt some regulations to make it legal, they feel happier and everybody else does too. I am not looking at them being open for business, say, after the performance, although they may have a special party to entertain the cast at the beginning of a show. I am looking at Roy Thomson Hall, where you have Ed's Warehouse and all his eating establishments across the street, as well as some other nice ones right around in there, who would complain.

This is not taking business away from the regular commercial operator. It is just a convenience for the theatre-going patrons. While you are waiting for somebody to show up, if you are going with another couple, you can sit and relax.

Mr. Watson: What about the matter of the minibars in hotel rooms?

Mr. Blair: They are legal, and more and more of those are coming into being. At one time there were two or three. The Chelsea Inn and the Airport Hilton were allowed to have them on an experimental basis. At that time it was understood that those minibars would be cut off at one o'clock, the same as the regular bars, but that is not there now.

If you go into some of the new hotels, such as the Winston in Ottawa, they have them. You get a key for what looks like a little refrigerator. Some of them have an honour system, but if you are not 19 you do not get a key for it, so there is control from the age factor.

However, the feeling is that you may take a bottle into your hotel room at any hour of the day. If you wanted a drink at three in the morning you could have it. That is your home away from home. That is the theory behind that.

Mr. Watson: How did you ever hope to enforce the one o'clock closing?

Mr. Blair: This is an electronic device that cuts them off. The Chelsea Inn has that.

Mr. Watson: You cannot open it after one o'clock in the morning?

Mr. Blair: No, it is cut off downstairs.

Mr. Hennessy: Unless you leave the bottle out.

Mr. Blair: You cannot sweeten your drink after one o'clock.

Mr. Hennessy: If you take the bottle out at 12 o'clock and the thing locks automatically, you have the bottle.

Mr. Blair: If you take it out though, you pay for it.

Mr. Hennessy: You pay for it anyway if you want to drink from it. I am saying if you want to fool them, you take the bottles out and let them lock up an empty cabinet.

Mr. Blair: Do you have any problems with minibars?

Mr. Watson: No I do not. I just wondered what the status of them was.

Mr. Blair: They were just regularized in the last year.

Mr. Watson: I just did not know how you would shut them off at one o'clock.

Mr. Blair: It is with an electronic device.

It was an iffy thing for some time around our way whether we should allow minibars or not. But I said at the time and will say so again, if Minaki Lodge has them it is pretty hard to deny them to other places.

Mr. Watson: Where is that?

Mr. Blair: I have never been there, but I am trying to work up an excuse to go.

Mr. Watson: Maybe we could go to investigate whether or not these minibars are working up there.

Mr. Breaugh: We could take Bob Coates with us. He is not busy.

Mr. Blair: I think they are a good thing and no harm is done if they are handled right. Some of the addiction research people will always say about them--I saw a little blurb in the paper--"Oh, the minors will be getting at them," and all the rest of it. But the hotels have a lot at stake so they will make sure the rule is enforced. When you check into a room, if you are not of age you do not get the key for the minibar.

Mr. Watson: With regard to the matter of age of majority cards, do you issue those?

Mr. Blair: Yes, at \$4 per card.

Mr. Watson: Okay. I had a great and glorious idea about these a year ago and I was going to introduce a private bill but I got shot down. I feel that people who get an age of majority card should have had some education about the use and abuse of alcohol. I am not talking about the morals of it, just the effects.

I use as a comparison the process of getting a hunting licence in this province. We used to shoot about 25 or 30 people a year 25 years ago, and now there might be one. One now has to take about a 10-hour training course on the use of a gun before one can get a hunting licence in this province.

In trying to encourage young people to make sure they know about the effects of alcohol, I thought it might be a good idea--

Mr. Chairman: To have a 10-hour drinking session?

Mr. Watson: --for them to know the laws they were breaking, to know how the system works. Some of it might be done through the schools. I am not saying it would have to be.

Mr. Blair: I agree with Mr. Watson 100 per cent. I have been advocating this for about two years. I have been involved in some of these Addiction Research Foundation seminars and things. They are teaching sex education at lower and lower ages all the time. I think that is good. Why are they doing it? They are equipping young people for the realities of life. Surely in this day and age drinking is a reality. I suggest a course in the high schools on dining and drinking.

2:40 p.m.

So often these research people--this was the case out in Banff--are mostly concerned with research problems. There they were exchanging methods of research more than they were dealing with the problems of consumption of alcohol in society. Also, they were dealing with strictly drinking establishments; food was not even mentioned.

I would think dining and drinking could very well be a course for young people in the high schools. I suggested that to the local addiction research people and they were looking into it. I do not know what is going to happen there.

If a person gets the identification card we issue--they provide the three pieces of evidence required, then we issue the card--do you think before they go away with the card we should give them a little instruction? Is that what you are getting at?

Mr. Watson: I think they should have the instruction somewhere. Part of it might be in high school.

Mr. Blair: I agree.

Mr. Watson: Part of it might be that a local service club is going to take it on. Part of it might be the addiction research people. Part of it might be the police. I do not know where it is best organized.

Where I got shot down more than anything is that apparently we have decided to put pictures on people's driving licences and you are going to recognize those. I take it that the age of majority cards are going to become almost obsolete.

Mr. Blair: They will dwindle down to a mere trickle. There are always a few who do not drive. They would need a card. The motor vehicle licensing office could very well be the place where they get their age of majority card, whether they get a driver's licence or not.

Mr. Watson: Therefore, that moves it back. The age of majority card was going to be very simple. I had a very nice scheme. I said we should continue to issue the age of majority card at age 19 as long as they had taken the course. If they did not want to take the course then we would not give it to them until they were 20.

That might be some sort of incentive to do it, but I am also told that would not stand up today under the Charter of Rights and Freedoms and those kinds of things. That does not divert me from the fact that a lot of the problems we have with alcohol could be resolved by training at the age when you are sensitive to those things.

Mr. Blair: You have a new Minister of Education (Mr. Norton). Maybe you will have some influence on him.

I am concerned with the dining and drinking aspect. We all

go to cocktail parties and sometimes they are long affairs, which I really frown on. An hour and a half is ridiculous, as far as I am concerned. People go waltzing in there. They are lined up early. If the cocktail party starts at 6:30, they think they are insulting their host if they are not first in line, and they come in with an empty stomach.

I think a course in the high schools is overdue. It would not need to be a long course. They could have the curriculum set up and do a real job. Ignoring it does not mean the problem of drinking is going to go away.

Mr. Cureatz: That would work in conjunction with something that has bothered me for a long time. That is a course in public school or high school on watching television, which may seem a little unusual to some of you.

There is a pile of junk on that little box that feeds on students and children. If they were educated on what to disdain in television and what to watch--commercials and selling beer and the whole bit--we could combine the courses. We will work on that.

Mr. Villeneuve: Mr. Chairman, I have a couple of quick questions. In my riding there is a group--it is not a charitable group--called the Alexandria Snowmobile Club. They were refused a permit but then eventually granted it after a little bit of interceding on my part.

Mr. Blair: Your predecessor and I had several discussions about that.

Mr. Villeneuve: It is not a charitable organization. By the same token, with the funds they obtain from their carnivals, etc., they do maintain many kilometres of snowmobile trails. If it were not funded in that fashion, I presume we would have to find some funding somewhere in some of the ministries.

I like to see this community spirit, this self-help situation. Rightly, wrongly or otherwise, the sale of liquor is involved. I was told by your people that they had better come only once a year. I guess maybe that is it; they have their carnival once a year and that is how often they approach the licence people.

Mr. Cureatz: Everybody stand up.

Mr. Breaugh: We have just been graced by the presence of the freshman whip.

Hon. Mr. Robinson: The honourable freshman whip.

Interjections.

Mr. Villeneuve: I was very appreciative that the rules were being bent, broken or what, I guess. Could you please explain that to me?

Mr. Blair: I think they applied for a club licence. I am not too sure if they really complied with the rules and regulations in that regard. It was really a young couple who ran this place.

Mr. Villeneuve: Yes.

Mr. Blair: I do not think there were any club fees or association membership that amounted to much.

Mr. Villeneuve: This was for their carnival queen, for one night or one day.

Mr. Blair: They would have no trouble getting that, would they?

Mr. Villeneuve: They were turned down because they were not a charitable organization. I contacted people in your office and it was granted eventually, but they were initially turned down as a snowmobile club raising funds to maintain their trails, not a charitable organization

I guess I can see your point, but I could declare myself a something or other and start doing it on a regular basis. As Mr. Hennessy mentioned earlier this morning, this probably is occurring and you have to keep a very close watch on it.

Mr. Blair: There are ways of doing this. I think they could form themselves into a club and get a licence, but they would have to have an ownership in the facilities, at least in the clubhouse.

Mr. Villeneuve: In what they call their headquarters.

Mr. Blair: Yes. Is it still the same people running it?

Mr. Villeneuve: I do not believe they are licensed there. Possibly they have a spot, a licensed establishment, a hotel privately owned, which is what they basically call their headquarters.

Mr. Blair: I have not been conversant with them for a year or two.

Interjections:

Mr. Hennessy: That is what I was concerned about. When you bring your recommendations with regard to community affairs, that is like taking into consideration softball, baseball, hockey and wherever a team may play, such as the city arena. They do not have a clubhouse.

Mr. Blair: It could be that part of the requirements in the new regulations regarding special occasion permits would involve the municipality. As I said earlier, if in doubt you say no. That is human nature. We get letters from a council or are contacted by the MPP, which happens quite often and I welcome

that. If it is iffy and the local member recommends it, that is fine with me, but I think municipalities could make recommendations at their meetings at least twice a month. There would be no problem there.

Mr. Hennessy: In all fairness, I would say to the local members who go to bat for an organization, the percentage must be very low, if any, of some member recommending some club that is not above board. because he would have to come back to you some other time.

Mr. Blair: His credibility is unquestionable.

Mr. Hennessy: That is what I am saying.

Mr. Blair: I have been into the political business and I know if we get a letter with certain recommendations in it, usually if the member is doubtful or has changed his mind, there will be a phone call.

Mr. Villeneuve: That is basically all. I think every other aspect I was going to discuss has been covered.

Mr. Blair: If there is something more about the snowmobile club, you and I can talk about it. If they got the proper advice and everything else seems to dovetail, they could get something of a more permanent nature.

Mr. Villeneuve: I do not know whether they are looking for that. Right now they certainly are not putting pressure on me.

2:50 p.m.

Mr. Blair: Another problem with snowmobiles is more and more accidents.

Mr. Villeneuve: Yes, I agree with that. They are a dangerous weapon.

Mr. Edighoffer: After the opening remarks of Mr. Blair, I do not know whether I should participate or not, after his reference to the great county of Perth.

Mr. Blair: I was leaving Mitchell out of this. People around Mitchell are okay.

Mr. Edighoffer: You may be interested to know that you may be helpful to me. I have to go the Perth County Junior Farmers a week from Friday. Is there anything I should tell them?

Mr. Breaugh: Yes. Bring your age of majority card.

Mr. Blair: No. We would be happy to have a report from the area. I think it was north of there--

Mr. Edighoffer: I think most things have been covered, but have you ever signed a new memorandum of understanding?

Mr. Blair: Who prompted you to ask that question now?

Mr. Edighoffer: It is interesting--

Mr. Blair: There is one that was given to me to read. I have not signed one since I have been here. I think it was mentioned about the time Mr. Walker was leaving the ministry. When the member for York East (Mr. Elgie) appeared on the scene, he seemed to be preoccupied with trust companies and so on; so we never got around to it.

Mr. Eichmanis: The one that we have is from 1979. Our understanding was that there was one being prepared.

Mr. Blair: There is one being prepared and it has Dr. Elgie's name on it. In fact, we were discussing it the other day at the ministry, I guess. I do not think I am carrying it with me, but the fact of the matter is that it has not been signed. There are one or two clauses I have a little uneasiness about.

Mr. Edighoffer: I just wondered. Looking at the old one, I see the one where you have to inform the minister of any problems that come up in the press is given preference over the one of auditing the Liquor Licence Board of Ontario.

Mr. Blair: I would tell you we have been audited upside down every which way several times since I have been there.

Mr. Edighoffer: I just did not understand this--

Mr. Blair: Dialogue with the ministry is an ongoing thing. I will tell you that when you have a ministry such as the Ministry of Consumer and Commercial Relations that has so many boards and agencies under it, sometimes it is difficult to have the regular dialogue we would like to have.

I was hopeful at one time that there was going to be a change and there would be a little more even distribution, either something taken away from this ministry or we would remain and ultimately go to another ministry. There is ongoing dialogue with the minister and the deputy minister--if not the minister, certainly his immediate staff.

Mr. Edighoffer: Will there be a memorandum shortly?

Mr. Blair: Yes. Well, there is a new minister now, so--

The Vice-Chairman: Does anybody else have any questions he wants to ask?

Mr. Eichmanis: This is to the chairman who is sitting at the back. I was wondering if you could detail for us your relationship with the Alcoholism and Drug Addiction Research Foundation. You mentioned you attend some of their seminars and so on. When we had them before us they indicated they had some surveys to indicate that young people are drinking more or drinking less and they even had detailed surveys of in what areas of the province young people are drinking more.

In such situations, do you get information of that kind from them? Do you respond? Do you sort of note those areas where things are happening?

Mr. Blair: It is a spotty arrangement. We do not meet with them month to month. There is often correspondence and sometimes it is on the phone. I do not know whose responsibility it is to establish ongoing dialogue on a regular basis. I suppose it just depends on the issues.

Mr. Eichmanis: I guess one of the things we were looking at was the question of co-ordination of the whole alcohol policy in Ontario and the government's policy towards alcoholism, drinking and so on. The question arises, would it be useful for you to have some kind of closer liaison with the ARF?

Mr. Blair: Yes, it would be. By the very nature of the name, research foundation, we get information.

Mr. Mancini: I would not put too much (inaudible) in the research foundation, in my opinion. I do not think you would be--

The Vice-Chairman: Let the record record what Mr. Mancini is saying.

Mr. Mancini: I do not think you would be doing yourself all that much of a service.

Mr. Blair: It all depends on what they give us, whether we go along with it. One item that is always before us is the drinking age. There are a lot of people in this province who surprise me. They think all these problems would disappear if the drinking age was 21. I do not subscribe to that at all.

Mr. Eichmanis: In a situation where several agencies have differing views, how does it get sorted out, in the sense that the policy is fragmented to some extent? Do you have a say in the ministry's policies in respect to the drinking age and other matters? Does the minister go to the ARF? Does the Ministry of Health or the Ministry of Education get involved?

Mr. Blair: The Ministry of Health does a lot of funding for that organization, so naturally it is involved. The minister is involved in dialogue with us and in changes of regulations or the act. There are no changes to the act really, but regulations change all the time. As you know, they have to be okayed by the minister before they go to the regulations committee.

The view of our board is on record on the business of the drinking age. We were against the change. That was also the unanimous view of the Canadian Association of Provincial Liquor Commissioners. I deliberately had it on the agenda last July at our summer meeting.

Mr. Eichmanis: Would you also have input with respect to the sorts of things your inspectors see in the field?

Mr. Blair: Yes.

Mr. Eichmanis: Do you ever have occasion to meet with the ARF people and say, "This is the sort of thing we have noticed happening more and more," and provide them with areas of research, insight or information?

Mr. Blair: There is no organized setup for that. We do get together with our inspectors, at least once a year, as a group. We do not have very many now, so we get together once a year just for a day and night. They tell us what they would like to see changed. Usually, the minister and/or the deputy minister come to meet with them as well.

Mr. Eichmanis: Do you ever think of extending an invitation to the ARF people?

Mr. Blair: I have not thought about it up till now.

Mr. Mancini: What would they do there?

Mr. Eichmanis: They have another picture of what is happening in Ontario. The LLBO inspectors are out in the field and they see the kind of problems that are occurring in the various communities around Ontario. They could provide the ARF with additional information or insight into what is happening.

Mr. Blair: Following that symposium at Banff I mentioned earlier, I suggested to them--I guess you heard me say this this morning--that they should consider exerting pressure, if they thought it was worth having a course on driving and drinking in the secondary schools. They said they would. I do not know what is being done about it.

Mr. Eichmanis: Thank you.

Mr. Blair: Somebody asked me about a shopping list. One thing we are getting serious about now is allowing single-service utensils or throwaways in dining-room licensed areas. Up until now, they have not been allowed to use those kinds of utensils. One reason was to give us a little leverage or weaponry, if you will, to stop fast food outlets from getting a licence. If they have 20 seats, their menu is reasonable and they qualify in every other direction, they are entitled to a licence as a matter of right.

Mr. Cureatz: What did you do with the Rockton zoo past Hamilton? Did they not have a similar situation?

Mr. Blair: Who is this?

3 p.m.

Mr. Cureatz: The lion safari or something at Rockton.

Mr. Blair: I think they are exempt under the act, as is Canada's Wonderland.

Mr. Breaugh: What do you mean they are exempt from the act?

Mr. Blair: They are allowed to do it because of who they are and their setup. They are a place that can use single-service utensils around swimming pools, recreation facilities and that type of thing.

Mr. Eichmanis: For those of us who are uneducated, what does that mean?

Mr. Breaugh: Any bottles?

Mr. Blair: Oh, no. Throwaway dishes. plastic.

Mr. Cureatz: The reason I bring it up is that I had the Bowmanville zoo hammering the heck out of me.

Mr. Blair: Quite early after I came on the scene--

Mr. Cureatz: That is right.

Mr. Blair: --and you were there too.

Mr. Cureatz: Yes, but it somehow resolved itself, did it not?

Mr. Blair: There are some good eating places that want these by the very nature of their business. You crawl before you walk or walk before you run or something. Our previous minister was receptive to this, so we thought we would start it off in dining rooms where it is just wine and beer. We would hope they would use regular utensils for the wine and the beer, but if they wanted to use something else--

There is a place over here called Tap and Burger. I have not been in it yet, but they use beer in the preparation of their food. The cooking process removes any alcohol, but maybe there is some taste there; I do not know. They wanted to use plastic dishes, and there are some pretty good ones. They were ribbed--do you know what I mean?--for strength, and they are pretty good. I am not talking about these paper plates or these flimsy little forks that break when you put them into the meat or whatever. They are a little better than that.

The health departments and the environmental people for a number of years now have found no fault with this, and they think we are being pretty old-fashioned and starchy because we have objected to it.

Caravan in Toronto is an event that most of you know about and, of course, they are allowed there. The health department thinks we are altogether too picknickety. In any event, we are about to make a recommendation that single-service utensils be used in those places that have a dining room licence. I think it is a practical approach.

We were up at the Blue Mountain ski resort and looked their place a year ago or so--maybe two years ago--and we have allowed it up there, except in the main dining room they have there, which is a very nice dining room. We let the marketplace dictate whether you want your hamburger or whatever it is on a plastic plate or not.

But so many restaurants now are licensed that if you do not have a licence, there is a certain stigma attached to it. People wonder: "What is the matter? Is this guy a crook? Does he not provide good food? How come he does not have a licence?" A lot of these places may be open for business only during the day. They get requests for a bottle of beer to be served with a hamburger or a corned beef sandwich, and they would like to be able to do it, so we are attempting to accommodate them.

Mr. Edighoffer: Have you had any applications from (inaudible)--

Mr. Blair: No. There was a rumour in the paper one day that they were--

There is a place out in Mississauga called Fuddruckers. I had better be careful here. Just a minute.

Mr. Breaugh: Be careful.

Mr. Blair: They came in with all kinds of grand promises. It was a glorified McDonald's, only worse.

Mr. Mancini: What does that mean?

Mr. Blair: It too is an American franchise; they have some of them down in the United States. They could not care less about our rules, and the promises we extracted from them were not worth the paper they were written on, so there is a proposal to revoke their licence.

Mr. Breaugh: May I just pursue this for a second? Basically, your argument has been that if you use plastic dishes, you cannot qualify for a licence. But you are now beginning to recognize the strength of plastic dishes; so all of these wonderful little kiosks at Bay and Bloor or underneath big buildings downtown that have little fast-food places and basically serve food now might be considered for liquor licences.

Mr. Blair: First of all, they have to have at least 20 seats--sit-down seats.

Mr. Breaugh: Most of them could do something close to that. Most of them have little benches and things like that.

Mr. Cureatz: You need washrooms too, though.

Mr. Blair: You need washrooms and the whole bit that goes with it.

Mr. Breaugh: You did not do that at the home show. There was not even a window to look out of.

Mr. Blair: The genuine home show will be on in April down at the Coliseum.

Mr. Cureatz: I am not going back to that Coliseum for a while, I tell you.

Mr. Mancini: I am sorry I could not be here this morning. I really wanted to be here. I am very interested in the--

Mr. Blair: Yes, I was disappointed you were not. I was looking forward to your being here. We were warned to watch out for you.

Mr. Mancini: Thank you. I think you should always be prepared.

The resources development committee went to visit the rehabilitation hospital in Downsview. That is operated by the Workers' Compensation Board. They have a very lovely restaurant there. They may want to be licensed in the near future; I am not sure.

I just want to ask a couple of questions. Did anyone touch on the Blue Jay park this morning, the baseball park?

Mr. Blair: Yes. You mean the future dome?

Mr. Mancini: No. I am not interested in the dome right now.

Mr. Blair: We were also on Exhibition Place; Mike was on Exhibition Stadium.

Mr. Mancini: It never hurts to ask a few questions. It was more or less a ministerial order to license the Blue Jay ball park, was it not?

Mr. Blair: It was introduced in July 1982, I believe--

Mr. Mancini: On a temporary, trial basis.

Mr. Blair: --on a trial basis for the rest of that year and the following year.

Do you have a copy of the act? It is all in there. There was an amendment or two last year. We made an adjustment or two at the conclusion of the experimental period.

Mr. Mancini: But it was more or less a ministerial order to say, "Okay, we have decided politically"--

Mr. Blair: The minister introduced this matter in the Legislature.

Mr. Mancini: I mean for you people. Were you people not asked--

Mr. Blair: Consulted?

Mr. Mancini: What I am trying to say--

Mr. Blair: The chairman of the LCBO thought it might be wise to introduce beer at the ball park, yes.

Mr. Mancini: That is the answer I wanted.

Mr. Blair: Having in mind the drinking that was going on down there anyway. I happened to be a vice-president of the exhibition for a few years when I was mayor; so I was not a complete stranger to what went on down there.

Mr. Mancini: Every now and then we talk about the Addiction Research Foundation. They were commissioned to do a study as to the effects of beer in the ball park. Have they showed you the results of their study, or have they talked to you about that?

Mr. Blair: Yes. They made a statement some time ago--I do not have it with me, of course--that I found difficult to believe.

Mr. Mancini: What was that, sir?

Mr. Blair: About the drinking that was going on. They implied in their statement that they had made a study of the drinking pattern down there before beer was introduced.

Mr. Mancini: Yes.

Mr. Blair: I just found that rather difficult to believe.

Mr. Mancini: So you are a little bit concerned about their work too?

Mr. Blair: I did not believe that at all.

Mr. Mancini: That is interesting.

I am very interested in special occasion permits. I get a lot of inquiries about special occasion permits. With all the types of events and activities that go on now almost on a daily basis with organized groups, there are always problems with special occasion permits. There is always somebody who falls down on the job and does not get the special occasion permit.

I do want to say that any time I have called for a special occasion permit, I have been treated pretty well, but every time I call I feel I am imposing; I feel I am asking for something I should not be asking for. I was wondering if we can loosen up the procedure to help my conscience a little bit.

Interjections.

Mr. Mancini: No, I am serious.

Mr. Watson: Let us do that before he goes to Boston with his friends.

3:10 p.m.

Mr. Blair: You probably find yourself in the position of a lot of your colleagues in the Legislature--

Mr. Mancini: That is correct.

Mr. Blair: --who get called by somebody--

Mr. Mancini: On Friday for Saturday.

Mr. Blair: --complaining that they are having trouble getting a permit.

Mr. Mancini: Or they forgot, or they did not bother to advertise--

Mr. Blair: There are a number who are honest enough to admit that they had applied before. But they will tell you that they applied a week ago and they do not know what is going on when, in fact, they applied the day before.

Mr. Mancini: That is not the kind of problem I am talking about; I mean where somebody has really slipped up. For example, somebody forgot to order the bus for the committee that was going to the workmen's compensation hospital.

Mr. Blair: It was a good day to stay in.

Mr. Mancini: It happens. Of course they would call me. If it happened in Mr. Miller's riding, they would call him if the Kinsmen's Club, for example, forgot or something.

Mr. G. I. Miller: That is what happened with the science club; they forgot to make an application for it.

Mr. Mancini: Anyway, I get quite a few of these. As I say, I have no complaints. I am treated pretty well when I call. I have the feeling I am putting Mr. Rolling under the gun. I certainly would not want to abuse the job he is trying to do. Exactly what is the policy when these things happen? Is it if Mancini calls three times in one year, you will allow it and if he calls six times, that is too much?

Mr. Blair: No.

Mr. Mancini: What is it then? Is it the particular group?

Mr. Blair: It is the group and the location of the function.

Mr. Cureatz: If Mancini calls, do not allow it at all.

Mr. Mancini: No, no.

Mr. Breaugh: Word is beginning to get out.

Mr. Blair: It is the organization. Our records will show that a given organization applies regularly for the third Saturday night in February. If the application has not come in and there is a hurried phone call, they will just trip over the thing. They can tell; our people have been around there quite a while and will know the organization and will issue it.

There are certain ethnic groups--and I am not going to name them for obvious reasons--who come along at the last minute. I went down to the Liquor Licence Board of Ontario. I was told by one of your colleagues in the Legislature: "You make sure you have your staff there as late as possible on Friday afternoon" for that reason. He obviously had had some problems.

Mr. Mancini: I just had one of these come up a couple of weeks ago. It was a Friday for Saturday. I picked up the phone. I spoke with Mr. Rolling. He was hesitant for a while but finally he agreed and was very nice about it. He was concerned. I think it was legitimate for him to allow the licence to be issued. It just kind of gives you a feeling that you are imposing on someone and maybe you should not be.

Mr. Blair: Oh, no.

Mr. Mancini: If that is the case, I will keep calling.

Mr. Blair: Sure. As I said earlier, before you came in, if the legitimacy of the organization is a question mark at our place, we feel good about being assured by the local member that he is familiar with it. If he is willing to stick his neck out, then we usually do too.

Mr. Mancini: I want to talk about lounge licences. Am I correct when I say there are not any new lounge licences being given out?

Mr. Blair: Not unless they are in hotels. But there are changes of ownership--transfers. Are you thinking about Windsor now?

Mr. Mancini: Everywhere.

Mr. Blair: Everywhere.

Mr. Mancini: Say, for example, I wanted to open up a lounge tomorrow. Can it be done?

Mr. Blair: Not unless it is in a hotel.

Mr. Mancini: Why is that?

Mr. Blair: Now you have me. I do not know what the reason is. I guess, historically, that is the way the board has operated. They will transfer an existing lounge licence or open a

new one in a hotel; that is just a watering hole where there is no food-liquor ratio. The entertainment lounge licence has an 85:15 ratio; nominal though it might be, it is still there. Of course, you know the others are 60:40 for a dining room and dining lounge--40 on the food.

Mr. Mancini: I am asked on a fairly regular basis. I hear from people interested in this kind of business. I know the hotel and motel association has very strong views on this because of the requirement to keep to 60:40, 50:50 or whatever it is.

Mr. Blair: A lot of the smaller hotels around the province are finding the dining lounges are doing very little business and they are closing them up. If they want to close them up as a dining lounge, they cannot automatically transfer that capacity to their lounge. They can do that up to 25 per cent. Maybe that is something that should be looked at too; I do not know.

Mr. Mancini: Are you saying hotels or motels, or is it all one?

Mr. Blair: They have rooms to rent for accommodation. They are allowed five seats for every room.

Mr. Mancini: Are you saying that if I want to go out and build a 12-room motel tomorrow, I will be able to have a lounge that sits 70 people?

Mr. Blair: Yes; five per room.

Mr. Watson: It is not quite that easy.

Mr. Blair: You have to have a dining lounge as well to provide food.

Mr. Mancini: You have to have both; I see.

Mr. Boukouris: The lounge cannot stand on its own. If you had a hotel licence, you could have a lounge unit, and the capacity of the lounge--

Mr. Mancini: I am talking about something brand-new. You have to serve food in one part and then you can have a lounge?

Mr. Boukouris: You have to have a hotel, even though you call it a motel. You would have a hotel licence if it were something new.

Mr. Watson: An upstairs with a mattress on the floor and half a dozen rooms does not qualify you.

Mr. Blair: That brings up a question we are having a problem with, the definition of a hotel, the number of rooms.

Mr. Mancini: The Canadian Automobile Association has a definition of a hotel.

Mr. Blair: How many rooms is it?

Mr. Mancini: I have the book, and there are definitions of motor hotels, hotels and lodges. They have all the definitions written out in their book. I am sorry that I do not have it with me.

Mr. Blair: If the number of rooms constituting a hotel were reduced, that would give a little more freedom to some of the older, smaller hotels out in the country. I am talking about perhaps bringing it down to 10 or even six, which is a figure that has been bandied about. They have to struggle.

There is a place in Stratford, the Jester Arms, where there is a good restaurant; it is set up like a pub. He acquired an apartment building that surrounded it, with 13 rooms above and behind it. The present act does not allow that to be called a hotel because of the population of the city of Stratford. It is taboo if he puts up a hotel sign, something I think he has done. In our books it is not recognized as a hotel. That is an example we had as to why we should reduce the number of rooms. He has a good operation, with two-storey rooms. I have been there. He serves a real need for the Stratford Festival, etc.

Mr. Mancini: A lot of people in the dining lounge business feel the rules are very strict. They would like to be treated more like lounges. Some months they cannot get their food ratio of 60:40 and they are very concerned about their ongoing business.

Mr. Blair: The whole business of the food-liquor ratio comes up every once in a while, and there is a certain element of our population that would like to see it done away with.

Mr. Mancini: I have real trouble with it.

Mr. Blair: I think we would be inviting a lot of trouble if we did away with it.

Mr. Mancini: With the cost of drinks and the taxes on alcohol, these people have problems, especially the smaller places that cannot compete with the bigger, more established places with \$15 dinners. When you are selling \$3 and \$4 lunches and \$6, \$7 and \$8 dinners and you are serving a couple of drinks, it is hard to keep that ratio; for example, if you are serving pizza and things of that nature. I am not saying we should do away with it altogether, because then everyone would have a lounge licence.

Mr. Blair: We would have 10,770 drinking holes in Ontario.

Mr. Mancini: Are we not being a little hypocritical? Do we not have drinking holes now?

Mr. Blair: Some are.

Mr. Mancini: Do we not have those drinking holes now? The only thing that goes along with it is a meal. If you change

the ratio, it is not going to eliminate the number of drinking holes; it is just going to change the ratio.

3:20 p.m.

Mr. Blair: If you did not have to achieve the food-liquor ratio, you would not worry about it. The quickest turnover of money is to sell alcoholic beverages; you would not have to be concerned with the chef in the kitchen.

Mr. Mancini: Have you had representations from the Ontario Hotel and Motel Association about their concern over the ratio?

Mr. Blair: Not really. They want us to maintain it. It is 60:40. There is always a judgement call on the part of our members who are hearing--

Mr. Mancini: Are you saying 60 per cent food?

Mr. Blair: No. At least 40 per cent food and no more than 60 per cent of the other.

Mr. Mancini: Okay.

Mr. Blair: Rightly or wrongly, I take the stance, and I think my colleagues adopt it, that if they are close--I am not talking about 30:70, but about 36:64, say, and that is the only deficiency; they operate a good clean business, the staff are good, they are good at reporting their figures to us and everything else--I am not going to get too excited about it. Usually, when they are brought in, that causes them to review their operation, adjust their menu, etc.

Mr. Charlton: Just on that issue, something has bothered me for a long time. I understand why there is a requirement for food, and I approve. But I have always had some difficulty with the fixed percentage. You have just talked about some flexibility, where they are running a good clean establishment and that is the only deficiency.

The 60:40 is based on dollars and sales. You can find two establishments side by side that are charging roughly the same prices for drinks; they have to in order to be competitive. But one is considerably less with regard to what it charges for food; so there is more likely to be a deficiency in their case. Is there not some way we could build a little additional flexibility into the system to take account of the actual price levels that are being charged; i.e., where two establishments are essentially serving the same volume of food but one is showing less on the till because of the prices?

Mr. Blair: What other measuring stick would you use?

Mr. Charlton: All I am suggesting is that if you have a situation in which his till on food is lower because of the prices on his menu, you allow a bit more flexibility.

Mr. Blair: That would be dangerous. He knows what the rules are. If he is an experienced restaurateur, he will know exactly what he has to do. There could be too much or the wrong kind of competition. I could point out all kinds of examples of people not making a go of it by trying to have a bona fide, good-quality restaurant, because they have McDonald's, Wendy's, Frank Vetere's, Harvey's, and those kinds of places all around them. They are having difficulties with some of the food. However, those other places are not licensed. Frank Vetere's are, I guess, but they are changing the name.

Mr. Charlton: You are not going to be able to solve that problem, and I understand that. All I am talking about is when one of your inspectors finds two places where one is pretty close to being right on the 60:40 and the other one has fallen below, not because he is selling less food but because he is charging less for it.

Mr. Blair: Maybe he should reduce the price of his drinks at the counter.

Mr. Charlton: Or maybe he should increase the price of his food and then there would no place left in that community for people with lower incomes.

Mr. Blair: Our people sit down with the licensees and discuss that with them.

Mr. Charlton: That is all I am suggesting. When an inspector finds a situation such as that, can he look at it flexibly in that light?

Mr. Blair: Yes. He will sit down with them.

Mr. Charlton: I agree the food volume should be maintained, but he is falling a little below the quota because he is charging less.

Mr. Blair: Our people sit down and talk to them about it. If they continue on that basis, and perhaps there is some other deficiency, we will call them in for what we call a discretion. They are not under the gun and having their licence suspended, or worse, revoked, but they will sit down with us at the board level and we will try to help them.

We have gone, not to the trouble, but it is our business to set them up as licensed establishments and the last thing we want to do is take away the livelihood of the owner and the staff. That is what is at stake here.

Mr. Mancini: How many licences a year do you revoke?

Mr. Blair: I knew you would ask that. Perhaps a couple of hundred. But there could be a revocation because--

Mr. Mancini: That many?

Mr. Blair: Surrender is the word I should apply to that

figure, I suppose. They have either gone out of business or we have forced them out. A lot of them voluntarily surrender their licences, but as for actual revocations, there are quite a few. I signed a whole raft of them last week.

Mr. Mancini: What would be the main reason for the return of the licence?

Mr. Blair: They are obviously not making a go of it.

Mr. G. I. Miller: It is financial?

Mr. Blair: It could be financial.

Mr. G. I. Miller: So it could be because they are having financial problems?

Mr. Blair: Four years ago, when I went there, we had to get their financial picture. A lot of them had mortgages at 20 per cent, 23 per cent. I thought, "My goodness, with the competition in that business, it is crazy to be borrowing money at that rate." I think those people are the ones who have gone under. They have no cash flow, nothing to back them up when they get in a hole.

Mr. Mancini: I am talking about when you really go out and take a licence back.

Mr. Blair: I do not know; I cannot tell you the actual number. I can get it for you.

Mr. Mancini: I am interested in what would be the main reasons you have found in your experience.

Mr. Blair: Just a bad operation.

Mr. Mancini: Sloppy? Dirty?

Mr. Blair: Sloppy, dirty, dishonest with us in their financing and their operation, who the manager is--we might feel there is an undesirable in there as manager. We have issued licences on the basis that it is understood Mr. Mancini has nothing to do with the premises or is ever on the premises.

Mr. Mancini: I wish you would not use my name like that.

Mr. Blair: I am just looking at you; you are the one who raised the question.

Mr. Mancini: Use Mr. Breaugh.

Mr. Blair: That was your 32nd cousin I was talking about.

Mr. Mancini: I do not have any cousins in trouble.

Mr. Blair: If we find that gentleman is in there, he is liable to have a revocation.

Mr. Breaugh: Do you think you will have trouble at some

point because of possible implications in the Charter of Rights? The Liquor Licence Board of Ontario is notorious for deciding that some people are unfit to have licences. We were discussing this morning the fact that police chiefs often have a similar kind of problem. They are quite happy to take a local council aside and say, "This guy is a bad person. Do not issue a taxicab licence to him," or bingo licence, or whatever.

There is a legal problem there now about the ability of an agency such as yours either to withhold a licence from an individual or to imply there are qualifications to the issuance of a licence. There are problems now with saying this gentleman here is not allowed on the premises or cannot be part of the operation. Do you have some trepidation that at some point somebody is going to challenge you on that?

Mr. Blair: Yes. That is right, and we are very cognizant of that. In a decision to refuse to issue a licence, we will try to find some other reason, not in lieu of the real reason but an additional one. We are aware of this and the law of averages says sometime we will be tripped up on it.

Mr. Charlton: How do you go about designating this undesirable? Is it somebody who has been convicted of things in the past; i.e., serving minors?

Mr. Blair: Or the crowd he travels in, or perhaps he has been in the drug trade. Maybe he has a lot of liquor-related offences.

3:30 p.m.

Mr. Charlton: What you are looking at, though, are criminal convictions?

Mr. Blair: Yes. I would like to think we are mature enough to recognize that people, being human beings, invariably have been involved in some teenage capers in their past. If there are some of those things there, I automatically look at their age. If they were 18, 19 or 20 and are now to 28, then so what? We were not all pure when we were young. If there are some recent convictions for theft--it is a corker how many of these people are involved in theft of over \$200 and that type of thing--and extortion, we have to be very careful depending on the source of our information and how confidential it is. We tread a very narrow line.

Mr. Charlton: You would not put a condition on a licence because somebody associated with the business is rumoured to be such and such?

Mr. Blair: Oh, no. We have to have something more than that.

Mr. Breaugh: My concern is that the act seems to be worded in a rather extraordinary way, in a language that I do not think would hold up in court. For example, the one little section that says, "the past conduct of the applicant affords reasonable

grounds for belief that he will not carry on business in accordance with law, integrity and honesty." It seems to me that section of the act is particularly unconstitutional. Even if someone were a felon and convicted of a criminal offence, the premise of justice really is that once you have served the time, it is game over. In effect, we are not granting licenses on the basis that we are anticipating that someone will act illegally or not honestly. It seems to me we are on shaky ground there.

Mr. Blair: That is a judgement call on our part. Let me backtrack a minute. If a person on his personal history sheet is asked if he has any criminal convictions and whether there are any charges pending and he says no or admits to one, but our police report shows several, then as far as I am concerned he is in trouble because he has been less than honest with us.

With those documents where there is an affidavit on the back and it is notarized by a solicitor--whose name one can never understand because it is just a scrawl there--it is a judgement call. Often it is an oversight on the part of his lawyer. Sometimes if it is a legitimate oversight, we will ask them to submit a new personal history sheet so the record is current and accurate as far as we can ascertain.

Mr. Breaugh: I think we are going to run into a problem. I noticed even in municipal councils now where we used to take police reports regularly as the basis for granting licences for this, that or the other thing, a lot of people tell me police forces are reluctant now to put these things in writing and everybody is pretty queasy about the status of that report should it ever get in front of a court. It is relatively safe ground to document convictions, but a police report that identifies someone as being an undesirable character is a very subjective judgement which may have trouble in front of a court these days.

Mr. Blair: Another aspect of this is withholding retail sales tax. I do not know whether you are aware or not--maybe members of the committee are not aware--that if the licensed establishment is delinquent in the submission of tax returns the retail sales tax people get in touch with us and we propose to suspend his licence until he has coughed up the money. It usually means that we act as an arbitrator. Often they have made their peace with the retail sales tax people ahead of time and arrange a method of repayment. Otherwise we just act as an arbitrator and set it up for them.

We try to encourage them to stay in business so the retail sales tax people will get their money. If we put them out of business, it is game over.

Mr. Mancini: I was just wondering if we touched on the scandal we had over there three or four years ago when two or three of your staff people had to resign or were charged. What was the disposition?

Mr. Blair: Do you mean the inspectors?

Mr. Mancini: Yes.

Mr. Blair: That took place six years ago.

Mr. Mancini: It seemed to be a big flurry there for a while and we read where some of your senior people--of course, before you were there--had been charged. People had worked at the board for 17, 18, 20 years. We never really got the disposition of all of that.

Mr. Blair: Several resigned. Others went to court. There was one case left to come to court when I arrived on the scene four years ago. He pleaded guilty and he was of an age to take retirement. He had a little business. There were a couple of others from the Ottawa area who were convicted of a minor thing but acquitted on the so-called major charge. They were reinstated by the grievance settlement board and came back on stream as employees, with full back pay.

Mr. Mancini: What were they convicted of? You said they were charged with a minor offence.

Mr. Blair: Yes. The one in Ottawa has died since. They were charged with accepting benefits. Those charges were withdrawn, but they were charged with falsifying their expense records.

Mr. Mancini: What did you do? Did you ask them for the money back?

Mr. Blair: I do not know whether we got the money back or not.

Mr. Mancini: If you took them back on as--

Mr. Blair: They were ordered back on by the grievance settlement board, with full pay. That was still hanging fire when I arrived on the scene. There were several who left the employ of the board at that time and we have heard nothing more since, although one has a grievance before the Ombudsman that some members of the Legislature may be hearing about.

Mr. Mancini: Was it the Ontario Provincial Police who did that investigation?

Mr. Blair: Yes.

Mr. Mancini: I see. Of course, sometimes when three or four people are charged they may have enough facts on only three or four but they may believe another 15 or 20 are involved. Did you have that kind of feeling when you took over the board?

Mr. Blair: I had a meeting with the inspectors in groups the first summer I was there to get acquainted with them and, among other things, to point out certain sections of the act. As far as I recall it now, I told them when they were on the job and were in a licensed place that was in the hospitality business and drank as well, they should remember there is a word in the dictionary I like to use, and I think these people are all old enough to use it, and that is discretion.

We know there are a number of, shall we say, new Canadians, who are insulted if you do not accept a sandwich or a drink or something.

Mr. Mancini: Not really.

Mr. Blair: Some of them are. In any event--

Mr. Mancini: Excuse me. I would just say that is just something people have believed over the years. It is not true at all. I do not think anyone is insulted if you are offered a drink and you do not accept.

Mr. Blair: I have reason to think otherwise. Whether it is common now or not, I do not know.

Mr. Mancini: I am very familiar with new Canadians and that is not so.

Mr. Blair: I am not aware of our inspectors getting in difficulty in recent times.

Mr. Breaugh: Do you instruct them not to accept free drinks and meals?

Mr. Blair: Yes. A memo goes out every year at about December 1, having in mind the Christmas hospitality.

Mr. Charlton: Have you thought of sending that same memo to all of the licensed establishments?

Mr. Blair: They know what the rules are.

Mr. Charlton: In Hamilton, for example, there are a lot of establishments that still seem to feel compelled, when the inspector comes through the door, to offer him a drink. It is to be hoped the inspectors are saying no in most cases, but long-established businesses get into a habit like that and they do not seem to quit easily.

Mr. Blair: No. We leave it up to the inspector to use his own judgement on that. We do frown on the business of one inspector frequenting the same establishment.

Mr. Charlton: In his personal life?

Mr. Blair: Right. He should not be seen in one place very often.

Mr. Mancini: I have a question on how you hire your inspectors. I had a very interesting case that happened after I was first elected. How much political influence is actually used?

Mr. Blair: Not very much.

Mr. Mancini: Not very much. I guess the case that occurred in my constituency must have been pretty rare.

Mr. Blair: Was this in Windsor?

Mr. Mancini: It was in Essex county, where the defeated Conservative candidate got his brother-in-law a job as a liquor licence inspector, or liquor inspector, whatever term is officially used by the board. This was seven or eight years ago.

3:40 p.m.

Mr. Blair: We have one inspector in the Windsor area and he worked for the Liquor Control Board of Ontario in Leamington. I am not aware of any of his relatives. Mind you, we get a local members recommending somebody. That happens all the time.

Mr. Mancini: This was highly political. I put questions on the Orders and Notices and I got all the information that was available. At first, it was denied that any influence was used and then it was said he was recommended.

Mr. Blair: This person came on stream. I was just told who the inspector was. I certainly had nothing to do with this one.

Mr. Mancini: I am interested to know if there is a lot of political influence.

Mr. Blair: Not very much.

Mr. Mancini: Not very much, but some?

Mr. Blair: There will always be somebody recommending somebody. In the times we are living in, people are looking either to improve themselves or to get a job, period.

Mr. Mancini: Do cabinet ministers ever recommended anyone?

Mr. Blair: The odd one, yes. There have been recommendations from private members of the Legislature on both sides of the House.

Mr. Mancini: I see. Are the people usually hired?

Mr. Blair: We had one in Hamilton recommended by Sheila Copps.

Mr. Mancini: The person was hired?

Mr. Blair: I knew you would be interested because she is a former colleague of yours.

Mr. Mancini: I am interested in what I am able to do. I am interested in being able to treat my constituents as well as some other people are able to treat theirs. I will keep in mind that you actually do treat requests for support--

Mr. Blair: Yes, but some politicians will actually recommend four people for the same position.

Mr. Mancini: I would not do that.

Mr. Blair: If you feel compelled for political reasons to support four, I suggest you give somebody a ring and say who your real preference is. That does not mean that person will get the job. Candidates have to meet the requirements and the interview panel really puts it to them.

Mr. Mancini: I humbly suggest that if you took care of this one particular matter for Sheila, you must have done 50 for the government party. I think the ratio is still--

Mr. Blair: We have not had that many vacancies, and some of them have got jobs without any political support.

Mr. Mancini: Some, but--

Mr. Blair: These are union jobs, as you know, and there are certain requirements.

Mr. Mancini: You are union after you get the job. You are not union before you get it.

Mr. Blair: I know, but the procedure for hiring is all down here too.

Mr. Boukouris: In collective agreements there are certain processes for hiring.

Mr. Mancini: I know in my case in Essex county--

Mr. Watson: If you think that is one of the privileges you are going to get some day, you can give up on that one.

Mr. Hennessy: Is it not so now, Mr. Blair, that seniority is more important? If there is a job open, they count the number of dollars you make and the amount of time you work in a LCBO store. If some fellow works X number of years part time that goes on his chance of getting a job if somebody else leaves.

Mr. Blair: The seniority clause is there.

Mr. Hennessy: That is right, and there is nothing you can do about that. If someone works six years part time, when a job comes up he is--

Mr. Mancini: Mickey, that is a different thing altogether. You are talking about the LCBO.

Mr. Blair: The seniority clause is in our collective agreement too.

Mr. Mancini: I am not disputing that. I am just saying I know, from personal experience and from having facts come out, there are political appointments. I want to make sure everybody is treated equally. If a member of the government party writes to you, I want my letter to carry exactly the same weight.

Mr. Breaugh: Andy is saying it will.

Mr. Blair: I could name at least two government members in this room today who made recommendations that were not carried out.

Mr. Watson: It will not do you any good to be part of the government.

Mr. Chairman: Do you have any further questions?

Mr. Mancini: No, I have exhausted all my concerns.

Mr. Charlton: I would like to ask about a situation that was brought to my attention a few months back. What do you do in the case of a Jewish wedding when the reception is on Sunday for obvious religious reasons and the rules on Sunday are substantially different from those for Friday or Saturday?

Mr. Blair: We provide an extension of a licence.

Mr. Charlton: You allow an extension of a licence. Do they have to ask specifically for that?

Mr. Blair: Yes. We deal with the hotel or the place where the function is taking place.

Mr. Charlton: Good.

Mr. Blair: I think the 11 o'clock closing on Sundays could be changed to accommodate Jewish and eastern Orthodox weddings.

Mr. Charlton: In fact, I think the one who was in touch with me was not Jewish, but Greek Orthodox or whatever.

Mr. Blair: There is provision for that in the act. We use a little creative interpretation from time to time.

Mr. Chairman: Are there any other questions? Perhaps I can touch on one, stomach bitters. I remember in the old days when I was a delivery boy for a drug store there was one customer of the drug store who got Syntona. Do you remember that?

Mr. Blair: I am no authority on bitters. Mr. Boukouris, do you know anything about them?

Mr. Chairman: He got a couple of bottles of Syntona a week. I could not understand it for some years, but it was heavily laced with alcohol. It had a high percentage of alcohol. Why are these bitters or preparations, as we shall call them, not in liquor stores? If you take this to its logical conclusion, a person could end-run the liquor stores and put out stomach bitters and herbal medicines, etc., with as much alcohol content as the liquor in the liquor stores.

Mr. Boukouris: We are looking at the whole panoply of regulations. Prior to this act and even subsequent to it, the liquor stores of the Liquor Control Board of Ontario sold bitters. For various marketing reasons, they wanted to be out of it. The

market is very fragmented. We looked at it in conjunction with them. The liquor board system is such that it does not lend itself as a marketing business to selling those very specialized items.

The situation was simpler years ago--in fact, not very long ago. There were six or seven types of bitters on the schedule; now there are 30-odd.

We believe the present regulations 43 and 44, which relate to selling to minors or to intoxicated persons, should be enforced in the areas where there are difficulties. As far as we know, the bitters are becoming a difficult matter in very restricted areas of the province, largely in cities and largely in this city.

There is also a provision in the legislation that limits the size of the container in which it can be sold. As long as they are alcoholic and as long as they are available, there will be people who will abuse them, but they were basically not thought of as being palatable for large quantity drinking. People with drinking problems will drink almost anything, as we know.

We have looked at the possibility of putting them back in the stores. The liquor board is reluctant to do that for very good marketing reasons. The board has written recently to interested people in the city of Toronto indicating that enforcement is a possibility in the areas where there are problems.

Perhaps the variety stores and drug stores, the people who are selling them, are not aware of the abuses that have recently come to our attention. If local enforcement does not work, we will have to look at it again.

Even our bargaining unit, the union, the employees are interested because it raises the whole issue of whether alcoholic beverages should be sold outside the government system at all.

Our view is that, as long as you have the four-ounce or 100-millilitre limit on bottle size, and as long as you enforce the provision with respect to intoxicated persons and underage persons, the situation is manageable even though some abuse is inevitable.

3:50 p.m.

Mr. Chairman: Is there a limit of four ounces now?

Mr. Boukouris: It exists already. We have had people come to us and say that the product is being sold in larger containers than that. Our response is, "If you bring us the container, we will go after the importer." No one has been able to produce such a container for us.

We are cognizant that it is a serious problem in some places such as the Danforth and Parkdale. I live in west Toronto, so I know the areas where it is a problem very well. I am a new Canadian ethnic who knows where these things are sold. It is a problem which is specific to certain areas. To change the regulations for the entire province to look after a problem that restricted is something we would rather not do.

Mr. Chairman: I always think of stomach bitters that used to be in quart bottles. It was a huge bottle.

Mr. Boukouris: That container is now illegal. There is the four-ounce bottle, or 117-millilitre bottle--I forget what four ounces becomes. In any case, there is a strict limit on the size of the container. The exemptions from the Liquor Control Act apply only to what has been sold outside of a government store. The other provisions about intoxicated and underage persons and buying on behalf of others are all still applicable.

Mr. Charlton: You and I were both part of a hearing in Hamilton before Christmas, an appeal hearing on a licence application, and the basic issue in that hearing was the desire of the community--

Mr. Blair: Is this the roadhouse?

Mr. Charlton: Right.

Mr. Blair: They changed their name, I think.

Mr. Charlton: Yes.

Mr. Blair: On appeal they got a dining room licence with a closing hour of 11 o'clock. Was this the one in the little shopping plaza?

Mr. Charlton: Yes. He is now closed.

Mr. Blair: That is very interesting.

Mr. Charlton: When you get an issue before you like that, where there is a group saying it represents a community and the community does not want the licence issued, and you have a proponent saying the group represents only a small segment of the community and he has people in the community who want the licence, what method do you have for determining the real feelings of a community like that?

Mr. Blair: It is a judgement call. We have to make a judgement about whether the opposition or the comments made are valid or frivolous. It is a judgement call. The nature of the objection has a lot to do with it.

This reminds me of another aspect of it. When a hearing is held initially, one board member hears it--my colleague or myself or whoever. If we say yes to that licence--maybe with a term or condition such as early closing, depending on circumstances--that is it. They can appeal the terms and conditions, but the people in the neighbourhood who are opposing the application have no appeal.

If I feel a licence is justified but there is a lingering doubt and I propose to refuse it, then they will--

Mr. Charlton: They will appeal it.

Mr. Blair: Then two members of the board, other than the person who heard the initial application, will hear it. Then when that decision is rendered, the grieved party--if they are grieved--can go to the tribunal. The appeal process is in operation. That is what I did in some cases in Toronto. Sometimes the two-member panel will uphold the initial decision. Other times they will not. The second time around, you can bet your bottom dollar that the applicant will be better prepared because he knows what he has to meet.

Mr. Charlton: So you are basically taking the information presented at the hearing--

Mr. Blair: Sometimes comments are made to us in writing. They are in the file. If they are, we copy them, and if there is time, we forward those to the applicant so that he knows what he is going to be faced with when he comes to the hearing.

Mr. Charlton: One of the things at issue at the hearing I referred to was that both sides had petitions. Both petitions had been signed by a good number of the same people, one for and one against.

Mr. Blair: This is common.

Mr. Charlton: What do you do in a case like that, just negate the validity of the petitions altogether?

Mr. Blair: Yes. When it comes down to it, it is a judgement call again. What weight do you give a petition? Having due regard to what you just said, you really cannot attach too much weight to them.

Mr. Charlton: There was a letter from one school principal and the other school principal was at the hearing. Do things like that carry a fair bit of weight?

Mr. Blair: Yes. The unfortunate part of it is that the board member usually has not seen the site. It would be helpful if he or she did. I was in Blenheim at a hearing once, and there was a little place near the high school and it had an eight-foot fence. I do not know what prompted me to do this, but I drove around to look at the place before the hearing. You should have heard the gobbledegook about the size of the fence and all the rest of the business at the hearing. They did not think for one moment that I had been there. So we granted it.

Since you are from the Hamilton area, we had the Gliders restaurant. Do you know that one?

Mr. Charlton: Gliders?

Mr. Blair: Yes. It is on Main Street West. I did not hear the initial hearing, but there was opposition saying that it was going to ruin the neighbourhood, all the kids. Good God, there is a railway track with a railway right of way between the back of the restaurant and the backs of these houses and two main thoroughfares there.

In the initial instance, they got an 11 o'clock closing. They are in a little plaza. I guess it is an old Ponderosa. It is there by itself at the end of the shopping plaza. There is another licensed establishment in the plaza with full hours and two theatres and the patrons come out after a show. Why should one person get the patronage and not the other? We changed that last week.

Mr. Eichmanis: When you were responding to Mr. Watson's question about what sort of things you would like to have changed, I believe--correct me if I am wrong--you touched on the fee schedule.

Mr. Blair: I think that will be taken care of when or if the restraint program of the government is lifted. Five per cent on a \$20 licence fee is not worth the paper to make the change. We want to get up to maybe \$100 or \$150, or something like that. Do not hold me to the figure, but something that is more realistic.

Mr. Chairman: One of you asked me if we would adjourn around four o'clock, and I said I thought we would, and there we go; it is about one minute to four. Thank you for appearing before us and being very candid with your answers.

Mr. Blair: Thank you. I rather enjoyed it. I look forward to meeting with you and your colleagues. It is a two-way street, incidentally. I pick up what was said here from several corners and it will help us in making recommendations to the government as well.

Mr. Chairman: The committee members are the ones "out on the street" when it comes to these complaints on the special occasion permits and so on and I guess you can take it as coming from the grass roots.

Would the committee stay. We have a couple of matters to deal with, the study session in Boston, the GO Transit letter and the sojourn in Niagara.

Interjections.

Mr. Chairman: Do we wish to meet in camera or stay on Hansard?

Interjections

Mr. Chairman: We will meet in camera.

The committee continued in camera at 3:59 p.m.

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STANDING COMMITTEE ON PROCEDURAL AFFAIRS

REVIEW OF AGENCIES, BOARDS AND COMMISSIONS:
LICENCE SUSPENSION APPEAL BOARD

THURSDAY, FEBRUARY 14, 1985



STANDING COMMITTEE ON PROCEDURAL AFFAIRS

CHAIRMAN: Treleaven, R. L. (Oxford PC)
VICE-CHAIRMAN: Watson, A. N. (Chatham-Kent PC)
Breaugh, M. J. (Oshawa NDP)
Charlton, B. A. (Hamilton Mountain NDP)
Cureatz, S. L., (Durnan East PC)
Edighoffer, H. A. (Perth L)
Kells, M. C. (Humber PC)
Mancini, R. (Essex South L)
McNeil, R. K. (Elgin PC)
Miller, G. I. (Haldimand-Norfolk L)
Rotenberg, D. (Wilson Heights PC)
Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Substitution:

Hennessy, M. (Fort William PC) for Hon. Mr. Kells
MacQuarrie, R. W. (Carleton East PC) for Hon. Mr. Rotenberg

Clerk: Forsyth, S.

Assistant Clerk: Decker, T.

Staff:

Eichmanis, J., Research Officer, Legislative Research Service

From the Licence Suspension Appeal Board:

Meyrick, D. F., Chairman

Woods, J. A., Secretary

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON PROCEDURAL AFFAIRS

Thursday, February 14, 1985

The committee met at 10:12 a.m. in room 228.

AGENCIES, BOARDS AND COMMISSIONS
(continued)

LICENCE SUSPENSION APPEAL BOARD

Mr. Chairman: We have in front of us this morning the Licence Suspension Appeal Board, represented by the chairman, Mr. Donald F. Meyrick, QC, and Janice A. Woods, the secretary to the board.

Do you have any opening statement, either oral or written, Mr. Meyrick?

Mr. Meyrick: Mr. Chairman, if I may be permitted just to go over matters well known to the members of the committee very briefly, the basis for our existence is found in section 31 of the Highway Traffic Act. We are a board statutorily provided for and appointed by the Lieutenant Governor in Council. A quorum consists of three members. In point of fact, our panel now consists of 10. There is a chairman and a vice-chairman who serve on the board for various appeals on a rotation basis of rarely more than three in any given hearing.

Our jurisdiction is found in sections 32 and 79. If I may paraphrase and characterize our role, we essentially hear appeals from those citizens who have had their licences to drive suspended by the registrar of motor vehicles by reason of health conditions. It has nothing to do with conduct on the road, any loss of points or any action, punitive or otherwise, at the provincial court level. These are entirely matters relating to health and ability to drive. People come before us to have the entire matter reviewed.

A second category would be appeals from the drivers of commercial vehicles who have had their licences downgraded or suspended, also for health reasons.

A third area of our concern would be to look into appeals brought by those whose licences have been suspended for illicit carriage of goods on the highways; persons who carry goods without the benefit of a public commercial vehicle licence, as may be required by legislation, and where it is, for one reason or another, deemed inappropriate to continue bringing them before the provincial court. They are very rare situations before us, but they do occasionally arise.

A more common fourth area of our involvement is to hear appeals under the safety standard program--that is, the garage

operators who are licensed to issue safety standard certificates to be free of defects for the transfer of ownership and that type of thing. In that program is also the licensing of mechanics. If the director under the Ministry of Transportation and Communications proposes as a result of an investigation and so on to revoke either the station licence or that of the registrant mechanic, those persons may appeal to our board. They comprise a significant number of the appeals coming before us.

That, briefly, is an outline. As I have stated, those jurisdictions are found in section 32 and section 79 of the Highway Traffic Act.

Mr. G. I. Miller: What is your case load? What areas provide the heaviest work load as far as your job is concerned?

Mr. Meyrick: I have some figures here that we can indicate to you. In the downgrading section--that is, the holders of commercial level--last year we had 15 appeals. In the straight section 32--

Mr. G. I. Miller: Is that the one that is health-related?

Mr. Meyrick: These are both health-related. Those holders of class G, which would allow them to drive an automobile, who had their licence suspended, made 69 appeals last year. For the downgrading or commercial people, there were 15 appeals.

Mr. G. I. Miller: Just 15 commercial people?

Mr. Meyrick: Yes.

Mr. G. I. Miller: That is not a great number. What length of time does it take to deal with that sort of case? Is there a time limit set?

Mr. Meyrick: There is no time limit. We distinguish section 79 appeals. They tend to go all day, very often beyond the noon hour, so we set only one case per day. For section 32s, the health cases, very-often we will hear two or three in one day.

The time that is required for each appeal varies. There is a great increase in the number of people represented by counsel. There seems to be an abundance of legal talent available for these people, and the time consumed in these matters is in direct proportion to the legal participation.

Mr. Chairman: Careful now. There are other solicitors in the room.

Mr. Meyrick: I happen to be one of those fellows.

Mr. Chairman: You are currying favour with the nonsolicitors in the room but not so much with the solicitors now.

Mr. Meyrick: In answer to the question, without being facetious, it varies. But I will say that the interest of our

panel of the board--which consists of three medical doctors, a chiropractor, a cross-section of the remainder of people who also have had a background in the transport industry and just generally lay people--in those who are unrepresented is quite remarkable, and sometimes they tend perhaps to prolong matters to give every benefit that is possible.

10:20 a.m.

Mr. G. I. Miller: What I was referring to with respect to time was the matter of when they can have their appeal heard. It has come to my attention on several occasions that people who make a living with their driver's licence have been concerned that they have not been dealt with quickly to know where they stand and to put the bread on the table, so to speak. This has been a key issue and a concern I have had in representing those areas. Are they dealt with expeditiously? Are there any regulations that--

Mr. Meyrick: I would hope we treat the matter expeditiously, although there have been times, with work load and availability of parties, witnesses and so on, when the matters have been rather prolonged at our level. But I do not think they have been unduly prolonged in many cases.

You should consider that there are two levels of involvement requiring time. One is the ministry level, which we have nothing to do with. When the matter of downgrading comes to the attention of driver control in the ministry, of course, they launch an investigation, which takes time. Sometimes, in advance of an appeal, on request, the ministry will take a second look at the matter. There may be some application on behalf of the driver, and it has come to our attention that they will take a second look at it, which they call a field review.

Following that, there is the waiver process whereby they appeal to the ministry for a waiver of their disqualification to drive under the regulations. After that is considered, and if the waiver is denied, that is the time the appeal is launched with us. We respond to that appeal and set a time within 30 days. Our scheduling of cases might indicate they would be heard two months after that. We are scheduled in, you see.

Mr. G. I. Miller: How many days a week is it?

Mr. Meyrick: We average about one day a week.

Mr. G. I. Miller: Is there a backlog now on the list of--

Mr. Meyrick: We have no unlisted cases. Any appeals filed are now scheduled. Our schedule now is into May.

Mr. G. I. Miller: Does the family doctor--for backup information to support the individual--is that given as much consideration as the doctor--

Mr. Meyrick: It has great bearing. On the health cases it is rather fundamental. Medical reports brought in and introduced, with or without the doctor, are very carefully considered by our board and regarded as paramount in the health cases.

Mr. G. I. Miller: Do you go outside of Toronto to hear appeals?

Mr. Meyrick: No. We are not itinerant.

Mr. G. I. Miller: Everyone in Ontario has to come to Toronto?

Mr. Meyrick: That is true.

Mr. G. I. Miller: In areas where they do not have the finances, that makes it difficult from the expense and travelling point of view.

Mr. Meyrick: It is difficult. There is no doubt about it. The tradeoff is that taking a panel of the board to a particular area in Ontario would probably result in our hearing only one appeal on that day at considerable expense. For example, we have 22 appeals pending at the moment. I doubt if there is a concentration of two or more cases in any area outside of metro Toronto. The appeals tend to come in from all corners of the province. Very seldom do we have more than one from a particular district or area. It is a practical problem, but I can see the inconvenience to the appellants.

Mr. G. I. Miller: Do you have any from northern Ontario at the present time?

Mr. Meyrick: I would think so.

Mr. G. I. Miller: They would have to come all the way to Toronto?

Mr. Meyrick: They would. The secretary reminds me that, as an obvious intention to meet that inconvenience, the regulations provide the appellant may submit a written appeal. They need not attend. If they engross their position in writing and file their medical reports and so on, the board will hear the written appeal.

Mr. G. I. Miller: Do you have any numbers to indicate how many have been dealt with that way from, say, northern Ontario?

Mr. Meyrick: I could not be specific on that. I could only give an estimate. I would say perhaps less than 10 per cent of all appeals are written. That is only my guesstimate.

Mr. Watson: I would like to clarify where you fit in concerning the individual who loses his licence. I believe I have had a bit of a misconception.

Is there not a medical review committee in the Ministry of Transportation and Communications that makes the decision as to whether a licence is to be downgraded or withdrawn?.

Mr. Meyrick: If I can avoid answering the question do they make the decision, I would agree there is a medical advisory committee that we have heard of consistently in these matters.

As I understand it, the registrar of motor vehicles refers health cases to a panel of medical experts and on that panel each specialty is represented. For example, if it is a matter of epileptic seizures that is the concern of the registrar, that panel contains two or more neurologists who would be experts in epilepsy. They review the cases and render an opinion to the registrar before he takes action. That history of the matter comes before us eventually, if there is an appeal.

Mr. Watson: Is that before he takes action? Is the person's licence downgraded while that opinion is being sought?

I thought you were the board that heard those appeals from the people in my riding who come in to see me. The numbers you gave me and the numbers I have do not add up. If I have had 10 in the last year, you have not heard them all, obviously. There has been a slow-up, and I think it is in this medical review panel.

Mr. Meyrick: It could be. I cannot account for the precise manner in which they handle it.

We are independent. We try to divorce ourselves from the mechanics of the administration. We are more concerned with the end results and the merits of the decision made.

As a matter of process and from time to time, the evidentiary weight of the opinion rendered by the medical advisory committee would come before us. We may agree with it or not. We would seldom disagree with it, unless there was contradictory medical evidence.

To come back to your reference to numbers, you must remember that we are the court of appeal. Several of the 10 constituents you speak of may have gone through the waiver process and succeeded, or not having succeeded, elected not to appeal.

Mr. Watson: Let me take a specific issue, diabetes. Does that come before you?

Mr. Meyrick: Yes, if as a consequence the licence has been suspended and the driver wishes to appeal.

Mr. Watson: Do you have any opinions on the diabetes issue concerning persons being granted licences?

Mr. Meyrick: I do not see it as an absolute disqualification. Diabetes is an illness which can be controlled. It can be stabilized. If it is stabilized, and acceptance and compliance by the driver is demonstrated and he has the appropriate medical support, there is no reason why the fact he has the illness should in itself be a disqualification.

The reliance would be on the medical evidence to indicate that the illness has been stabilized.

10:30 a.m.

Mr. Watson: Do you do any negotiating or compromising with respect to classes of licence?

Mr. Meyrick: Oh, yes.

Mr. Watson: I am referring to a person who applies to be an A, B, C, D, E, F--whatever categories there are; you know better than I do. There are school bus, large and small truck drivers and somebody else drives a car or, I suppose, even a motorcycle. Do you change the class, for instance, to give certain ones but not others?

Mr. Meyrick: Yes, because in the legislation we can set aside or modify the decision. I guess I can best answer your question by giving an example.

There could be an appellant before us who held a class A licence entitling him to drive pretty heavy trucks--transports. It comes before us in various ways. The registrar may see this person's triple bypass, or whatever it is, as severe enough not only to suspend his A but also to downgrade to a G, which would allow him to drive a car ordinarily. They will even suspend his G. Sometimes they will take him off the heavy transport but allow him to drive a stake truck, which would be a class D.

An appeal may come before us because the fellow is prevented from driving not only a truck but also a car, or it may be a situation where they have removed his authority to drive a truck but have allowed him to drive an automobile.

To answer your question, we have had situations in which we have ordered the appellant be given back at least his G or, having been downgraded, for example, we might direct that he be given a D but not be permitted to drive a school bus or a heavy transport.

Mr. Watson: Perhaps you will be unable to answer this, but what is the process with respect to reinstating a person after you have made your decision?

Mr. Meyrick: I am given to understand the mechanics of that are rather rapid. I have observed that usually the ministry's representative will be asked that very question, right in the hearing room, more times than not. If the fellow is successful and can get back his licence, the first thing he will ask is, "Where do we go from here?" I have noticed forms are exchanged, cards are given and there is an indication. Usually we are going on to the next case, so people cannot occupy too much time, but they are asked to communicate with a particular person in the ministry. Beyond that, I really do not know.

Mr. Watson: One complaint I get, and sometimes I guess there is good reason--and these are not only medical problems--is when a person loses his licence, usually for a criminal or a

Highway Traffic Act type of offence, he is told: "Your licence is under suspension. You cannot drive home from the courtroom." It is taken. They are given it for so many days and then they cannot understand why it takes so long to get it reinstated. The argument I hear is: "If you can take it away from me immediately, why can't you give it back the same way?" I guess we are quick to take them away but not to give them back.

Mr. Meyrick: I am not too sure the analogy applies in our case. You must remember that all appellants who come before us have lost their licence. I have to be careful with numbers here, but I think it is fair to say that at least some have the benefit of the appeal and are entitled to have some reinstatement as a consequence of our decision.

Subject to the paperwork, I understand it is rather rapid. Other than issuing the order--our decision is disseminated as an order of a tribunal in the normal way--it is rather rapid. However, I really cannot account for the mechanics at the ministry to actually get the fellow his licence.

Mr. Watson: Your decisions are put into effect as ordered. Your decisions are not recommendations to the ministry that they do this?

Mr. Meyrick: No. They are immediate.

Mr. Watson: There is no overruling by anybody in the ministry of your order?

Mr. Meyrick: Only by a repeat of the process. I cannot recall, but theoretically the whole process would start again and they could call the driver in for a test or to supply a new medical evidence and so on.

Mr. Watson: It may not come before you, but I am interested in the degree of handicap a person can have and still have a licence to drive. Do those type of cases come before you when they are turned down--and I do not know how to express it otherwise--because they are too handicapped?

Mr. Meyrick: This gets a bit technical. You would have to make reference to subsection 18(5) of the statute. Subsection 18(5) allows for no appeal to our board for a person who applies for a licence who for one reason or another does not get it. There is no appeal to our board. But clause (b) of that same section says that if a person has a licence and for one reason or another, such as for failing a test, etc. his licence is reclassified, downgraded or suspended, then an appeal lies to our board.

In answer to your question, if you are an honest applicant and for reasons of sight, hearing or any of the senses or restriction of limb or body, for one reason or another, you fail to pass the test for the licence, in the wisdom of the Legislature there is no appeal to this board.

We have had appellants come before us. There was one hard-fought, highly technical case, and it is now in the higher courts,

where an appellant who was an applicant for a licence was denied for health reasons and appealed to our board. We took the position that it was not for us to inquire into the reasons the Legislature did not provide an appeal. The fact was that it did not lie with us, because that right did not exist; so we denied the appeal, and that is now in the higher court.

Mr. Watson: That leads me to the next obvious question. One of the things this committee does in its report is to recommend changes to the legislation. Are you suggesting that this should be one of the changes to the legislation?

Mr. Meyrick: All I can do on that is to say that this subject has been before us, but it is apparent to our board that we do not have jurisdiction, in the legal interpretation and constructive interpretation of the statutes, to hear appeals from applicants who were denied a licence.

Mr. Watson: But it seems to me that in terms of fairness there is no reason why you should not. What is the difference? If somebody appeals to you because of the degree of his eyesight, and I assume that is perhaps the type of appeal that might come before you, what difference does it make if his eyesight went after he had his initial licence or before?

Mr. Meyrick: I agree that there could be that school of thought.

Mr. Watson: As a board, would you not see yourselves as being in a position to have that right of appeal for people applying for licences being turned down, again for medical reasons? You said earlier that all your decisions were of a medical nature rather than of a point suspension nature.

10:40 a.m.

Mr. Meyrick: Yes. The downgrading of licences usually relates to reasons of health, as does the suspension of the G licences. To that degree, I would agree. On these others, I hear what you are saying, and I agree there is that school of thought and reasoning and it is not free of merit; however, there is an opposing position, and I would like to be impartial.

Mr. Breaugh: Could you at least give us a little more detailed outline about why you decided this was not within your jurisdiction?

Mr. Meyrick: You get into legalese on that--

Mr. Breaugh: We do not speak it, but we have interpreters.

Mr. Meyrick: We gave a written statement. It is really a point of law, a constructive interpretation of the statute. Subsection 18(5), literally interpreted, says, "In the case of an applicant for a driver's licence, you may issue or not issue." Subclause 18(5)(ii) says, "Where the applicant fails to submit to or to successfully complete the examinations," the ministry "may refuse to issue a driver's licence...."

However, the condition precedent to that is that he must be a first-time applicant for the driver's licence. That is clearly distinguished from the second situation within that very section, because clause (b) goes on to say that in the case of a person who holds a driver's licence, if for one reason or another the ministry or the registrar downgrades it or changes the class, then there is an appeal to our board.

If that were not sufficient, if you look at section 32, which outlines our jurisdiction in the matter, if one had thought through interpretation of subsection 18(5) that any discretion rested with our board, that is sort of eclipsed because it says, "Every person aggrieved by a decision of the minister under subclause 18(5)(b)(i) or a decision of the registrar under section 30 may appeal" to the board.

Not only did the Legislature attempt to distinguish the two cases, one with an appeal and one without, in the reading of section 18 itself, but it also rather put the lid on it when it gave us jurisdiction because it said that, statutorily, we may only hear appeals from subclause 18(5)(b)(i).

Mr. Breaugh: Would the revolution start tomorrow if we broadened that and said that in any matter they have a right to appeal to you?

Mr. Meyrick: I have no way of knowing the volume of applicants refused. We have no body of experience except in this particular case.

Mr. Breaugh: Was that a concern of the board?

Mr. Meyrick: Yes, it was a concern. The matter came before us as an appeal launched, and we immediately faced a motion from the ministry that the appeal be quashed for lack of jurisdiction. The whole case surrounded an argument on the motion as to whether it was appropriate to quash or to direct that the appeal be heard. We decided by reason of constructive interpretation of the strictures of the statute that we did not have jurisdiction.

Mr. Breaugh: In essence, in this particular case you were arguing about whether you had any legal right to hear this case and you decided that you did not.

Mr. Meyrick: It was an issue of jurisdiction: Did we have the right to hear the case?

Mr. Breaugh: Am I correct in assuming that this has gone to a higher court?

Mr. Meyrick: Again, we lose track of it, but I have been informed that the matter has been taken to a higher level. Frankly, any clarification of the law would be appreciated.

Mr. Watson: Would you see it as possible to hear appeals from cases where an applicant was turned down for medical reasons versus a practical type of reason? Some people are turned down for

licences because they do not stop at stop signs or they just do not know how to drive a car or truck or something of that nature, whereas a lot of the medical ones tend to be (inaudible). I know about the diabetes issue or the heart condition issue, where most of the time they are all right, but you are afraid of that moment of weakness when they cannot do it.

In your opinion, would it be possible to separate those out as far as applicants without too much trouble are concerned, or would it just create confusion?

Mr. Meyrick: I am not too sure I understand the question, but I would just point out that any matters of a punitive nature, by reason of the absence of conforming to the rules of the road or any traffic laws of Ontario or any municipality, are not matters of our concern directly.

Mr. Watson: I understand.

Mr. Meyrick: We do the legal process, but sometimes indirectly. For instance, we had a large body of cases where there would be no fair description of the illness other than that it was alcoholism, where there had been a long series of convictions for driving after drinking. The automatic suspensions in place at that time seemed not to dissuade the individual and occasionally--indeed, more than occasionally--the registrar would cancel the licence on the basis that the alcoholism was in fact a disease that brought into question the qualifications to drive.

However, in the wisdom of the Legislature, some amendments were passed to the Highway Traffic Act some while ago. Now there is an automatic three-year suspension after the third conviction, and the number of appeals in that area has dried up. We took a number of months to work through the case load before us, but we now anticipate the number of appeals will be greatly diminished.

We also expect that there may be those who have had the three-year automatic suspension who may return to the habit and have come to the attention of authorities, and maybe it will be back to our board in years ahead. I do not know.

Mr. Watson: Is there any difference in appeal applicants that come before you as to whether they have voluntarily surrendered their licence or whether it has been taken away from them by the registrar?

Mr. Meyrick: The voluntary activity of appellants from time to time that comes to our attention is admirable. Many drivers do not walk in and hand in their licence, but they come in and will indicate they have a certain health problem and ask that the situation be considered. It is remarkable how many of our citizens do bring to the attention of the ministry certain health conditions that call into question their ability to drive. They are self-reporting complainants, if you wish.

Mr. Watson: You would hear appeals from them the same as you would hear appeals from everyone else?

Mr. Meyrick: Yes.

Mr. Watson: I happen to have one on my platter right now, where the chap was persuaded by the police that he should give up his driving privileges. There was no court case or anything else. It was just that he did not think he was in good enough health to drive and that he should give it up, and he did. Now he feels he is well enough to get it back, but the MTC people do not think he is well enough.

Mr. Meyrick: We do not always know why the ministry has investigated a particular case. I draw to your attention that medical people are required to report certain things by law under the statute. There is a degree of protection under a section that provides for confidentiality. For obvious reasons, that type of activity would not be revealed to us and made known.

Very often in the family of events and facts that we have reviewed as part of the appeal, the factual background, we are not told how the matter originated, and I think for a good reason.

10:50 a.m.

Mr. Watson: In selecting the board members to hear a case, is any attempt made to select members who are knowledgeable of occasions or with the situation before you?

Mr. Meyrick: No.

Mr. Watson: You mentioned the other review board at the ministry level where they have chiropractors and so forth, but in your scheduling of appeals, is it just a matter of who is available, or do you take into account the general kinds of cases you are going to be hearing?

Mr. Meyrick: Yes.

Mr. Watson: In other words, if you have a licence that is turned down because of a heart bypass, do you have a medical man there who is more knowledgeable on hearts?

Mr. Meyrick: We call on our panel in rotation. The exception to that arrangement would be exactly the point you raised. We have three medical doctors who were appointed on our recommendation some while ago because we felt a great need to have the benefit of some medical participation on the board. Wherever possible, we tend to have at least one of those doctors on the medical cases for that very reason.

On the other hand, where medical expertise has no benefit at all, we have other technical people whom we like to have involved with section 79, where they review the mechanical work done by a station in relation to issuing safety standard certificates.

Mr. Watson: So if you were hearing those kinds of cases, you would not have a doctor on the board.

Mr. Meyrick: Not necessarily. There is no

disqualification if they come up in rotation, but there would be no particular need to have a medical doctor there.

On downgrading, not only is it a benefit to have a medical person there because it is a medical question, but a member of the panel who has some familiarity with the transportation industry would be of some benefit.

Mr. Watson: Does the board maintain offices or investigative staff?

Mr. Meyrick: No. It is up to each party to prepare and present his own case.

Mr. Watson: Do you operate out of ministry offices, or where do you hold hearings?

Mr. Meyrick: The board's office is in LuCliff Place, and geographically we are independent of the ministry or any other government body.

We have, as an adjunct thereto, a hearing room, or a courtroom, and we share that with the commissioner of mines. That is under the aegis of the Management Board of Cabinet.

Mr. Watson: Are you satisfied with your mandate? Do you think there should be changes in it, or in the number of members you are allowed to have on the board, or anything of that nature?

Mr. Meyrick: It has not always been so. Much has been done in the way of changing things, but our difficulty in years gone by was that we had members of our board who were appointed forever, for the time being, and others who were appointed for much shorter periods of time. That has all been changed, on recommendation, so that we have not more than four coming off in any one year. Thus we have a continuity of knowledge and experience so matters can be carried forward.

There are all sorts of practical situations there because lawyers are great in asking for adjournments and if you have deferments and retiring members of your vested panel, that has to be carefully watched.

Mr. Watson: At the moment you do not have any shopping list of changes you would like to see made to your board to make it operate more efficiently?

Mr. Meyrick: On the panel, no.

Mr. Watson: Or any changes to the regulations under which you operate; I guess that is what I am asking.

Mr. Meyrick: We are functioning well. The greatest change occurred three years ago when we got our own office and premises. Prior to that, we were hanging our hats here and there. We had great difficulty getting hearing rooms and scheduling our cases. That was a horrendous problem, but we are now beyond it.

Mr. Chairman: I have two questions. You do not have your own medical staff but the ministry does, so there is medical input on the way to your board. Does your board give equal weight to the appellant's medical evidence from his own physician or specialist as it gives to the ministry's?

I say it in this way because in my experience with the Workers' Compensation Board or Social Assistance Review Board, the ministry's or the board's medical evidence is given far greater weight than the appellant's. The appellant's is totally disregarded at times. I would like you to comment on that.

Mr. Meyrick: I would respond immediately by saying that is a mischaracterization of anything that goes on before our board. Very often the medical evidence of the ministry--leaving aside the medical advisory committee--usually takes the form of a doctor's report in writing. Usually the medical reports supplied by the ministry are the very reports obtained by the appellant from his own doctor.

That may confuse you somewhat. We do not know how some of these cases start. All we know is the fellow is taken off the road by reason of a health condition. We know that when the matter comes to the attention of the ministry, it immediately sends out a prescribed form to the driver asking him to go to a doctor of his own choice to fill it out and give the details of the area of concern. That document comes in. In the history of the matters that come before us, particularly with medical evidence, that is the first evidentiary document we see.

It very often happens that all medical reports thereafter are by that same doctor or by one of two or three doctors selected by the driver himself.

Mr. Chairman: That seems to be a fairly different type of procedure from that of those other boards I referred to.

Mr. Meyrick: Do not compare us with the WCB because that remarkable board is a breed unto itself.

Mr. Chairman: You have practised law.

Mr. Meyrick: There are differences, not the least of which is, when we make decisions, we give reasons.

Mr. Breaugh: That sure is different.

Mr. Meyrick: And we may be appealed from. Our panel members are very cognizant of that important function.

11 a.m.

Mr. Chairman: Thank you. I would like to inquire about the rationale of this downgrading. I can understand the rationale of saying to a bus driver, for health reasons, "We want to take away your driving privileges" because there are many other people on a bus and many lives involved.

I am having a little trouble with the rationale of saying, "You cannot drive that truck but we are going to let you drive that car." If the basic idea is safety on the road--safety of others as well as of the driver--I am having trouble saying that because one vehicle is a little bigger or heavier, we are going to let him drive a smaller one, but with the same health problems, the same likelihood of not seeing, passing out, etc., as with a larger one.

It is as if a fellow has proven in one way or another that he is not very responsible with firearms: "We are going to restrict you to carrying a .22. We are not going to let you use shotguns or heavy rifles because you are not good with firearms." It seems to me the rationale for the .22 versus the heavy rifle is the same as that for the small car versus the heavy vehicle. If he is not capable of driving one vehicle, how is he capable of driving another?

Mr. Meyrick: If you are having difficulty with it, all I can say is join the crowd, because this is the difficulty. It is a heart-rending situation for the driver who is deprived; it is a very difficult situation for the board. I guess the simple answer would be that it is a question of degree: you have an illness that is of too much concern to establish qualifications to drive a heavy commercial vehicle but that is not of so much concern that you cannot drive a car.

We are troubled by that, but we only follow your wishes. You passed the statute allowing for downgrading in section 18 and the regulation as promulgated, which is regulation 46(2), section 9, has a great, long list of every health condition you can imagine that is regarded as serious, and if you have them you automatically lack the qualifications for certain classes of licence. So when it comes to the board it is a matter of law and regulation.

Superimposed on that, so that there may be some relief--and you as members, or your predecessors, debated this in the House--you allowed a waiver process to be instituted whereby there can be an appeal to the minister. If that school bus driver, or whoever it may be, has been a school bus driver for 40 years, if he can demonstrate responsibility and if his particular health problem, whether it is a cardiac problem or whatever, has been stabilized, sometimes in that mysterious process of studying matters he is successful on the waiver and gets back his licence.

If he does not and if he is still aggrieved, he has the right to appeal to our board. We are no less troubled by the evaluation of the facts and the medical evidence before us, but it is not for us to ask why the Legislature permits a person with a given health condition to drive one class of vehicle but not another. That is the situation that comes before us. We will review it and, drawing on a body of experience, we will know when an A is reduced to a D what factors are involved, and if the applicant did not receive that benefit, maybe we will review it and at least give him a D.

It is not an easy task. The board appreciates the

difficulty. It is a judgement call based on the medical evidence. A lot depends on the impression the appellant makes. Sensible people who seem to have health as their first priority and the need to drive as their second priority are sometimes successful.

Mr. Watson: Can I have a supplementary here? Do you have any ability to grant a degree to which the licence is used?

Mr. Meyrick: No.

Mr. Watson: I have one example in which the man has been downgraded. He wants the licence to be able to help his sons deliver tomatoes in the fall. It is six miles straight down the road. That is one of his jobs. He has always delivered tomatoes. Two years ago he had a heart attack, but now he is fine. He does not want his licence to drive on Highway 401 to Toronto or anything of that nature.

Mr. Meyrick: There is no question that certain appeals have come before us where we were satisfied that the health conditions just did not allow, in any test of what is prudent or reasonable, that driver to be on Highway 401. The same driver said: "I promise I will not go beyond the confines of my farm, or beyond the neighbouring town. All I need it for is to truck machinery from one field to another or to deliver my produce, and I promise."

But a licence is a licence. We cannot authorize a restricted licence confining a driver geographically to an area or dictating how he should drive or when he should drive. A licence is a licence. If we restore that licence, technically he can drive to British Columbia.

Mr. Watson: Would you like to have that ability or would it be a terrible danger?

Mr. Meyrick: I have one case where the chap had a farm, but he had an illness. He was the only man on the farm, through deaths in the family and one thing and another. He just could not function without his licence and yet he was terribly ill and would have been a danger on the road. If we could have been governed by our hearts, we would have given the man a licence hands down. But in any reasonable appreciation of public safety he should simply not be allowed on the main highway.

I guess the answer to your question is, yes, thinking with our hearts, but how do you enforce it? What problem do you pass on to your municipality and how often would such drivers, getting the benefit, say: "Oh, it will not hurt. I am going down to see Aunt Nellie in Toronto"? I do not know.

Mr. Watson: I have no trouble with the licence to drive versus not. It is the one where you can drive a car but you cannot take a load of tomatoes into town, even though physically the truck has power steering and everything else and really is not any more difficult to drive than a car, but you cannot do it.

Mr. Meyrick: We do it in other ways. If such a case

comes before us, knowing we cannot give a restricted licence, you can rest assured our board will go back over the facts and give every benefit of the doubt to the driver, because we realize how severe the penalty is to someone who, through misfortune, is being deprived.

11:10 a.m.

Mr. Chairman: May I just carry on with that? We have public commercial vehicle licences. We have had restricted things for years whereby carrier A can pick up furniture in Middlesex county and deliver it to Toronto but is restricted all over the place; he can deliver goods from company A to destination B.

Would it not be useful to give you the power of restricted licences, to say that A can drive a vehicle on township roads only within Kent county or within East Oxford township to accommodate him, or in the spring or the fall at harvest time? Is it not possible to give that? You asked how would it be enforced. The PCV fellows have no problems standing around the township roads nipping off truckers every so often. I would not think the policing, every so often stopping and looking at the conditions on a restricted licence, would be that difficult.

Mr. Meyrick: Mr. Chairman, I do not know whether it is for me to make a comment on that.

Mr. Chairman: It actually is, because this committee does ask, as Mr. Watson did, for all committee chairmen and other spokesmen to make suggestions if they think things could be expanded, if it would be useful or redundant.

Mr. Meyrick: I am sure there is a pro and con on that picture, but I would not be adverse to a study and review of that type of situation. All I can say is there have been those situations where the board would have reinstated some class of driving authority, had we been comfortable in the assurance that that driver would not go beyond certain confines or designated areas because of the minimal traffic involved, the minimal traffic conditions and the greatly reduced risk to the public. We could not, knowing we would have to give a licence back for all purposes, which would include unrestricted travel.

Mr. Chairman: Thank you.

Mr. Charlton: On that subject, I do not know whether you would know the answer to this or not, but the ministry used to issue restricted licences in cases of conviction on impaired driving where the licence was a part of a person's livelihood. They would sometimes issue a licence that could be used between 8 a.m. and 8 p.m., or 9 a.m. and 5 p.m., or whatever the case happened to be. Some years ago they stopped doing that. Do you know the rationale for their change of procedure? Was it because that system was being abused?

Mr. Meyrick: I do not pretend to be an expert in that area. Suspension or restriction on licences as a result of a punitive method must be distinguished from those cases where the

poor fellow's qualifications to drive, through misfortune and not misconduct, are called into question. I postulate that if you keep the two distinct, it is easier to see that you can have a restricted licence in the area of a punitive attempt to restrict, because it is up to the individual to make a conscious change in whatever he is doing.

I understand you are seeking the extension of the principle of the analogy with the commercial carriage of goods, Mr. Chairman. There you are dealing with physical things and physical routes in a sort of commercial line of things. It is a tradition grown up by the Ontario Highway Transport Board. I do not know if that is all going to be changed under new reform legislation.

Again, how does one make an analogy with the health situation in the case of the poor fellow that has had a triple bypass? He is well intentioned. He wants to do what is right, but what control has he got over his health condition to prevent a failure at a particular precise moment?

It could be demonstrated that he is compliant, he is attentive, he accepts his condition, he submits to the best possible medical advice, the best possible drug or other therapy, and he does everything that is required of him. Even then, no one can predict whether there will not be a recurrence of this situation. It is not a matter of conscious change of attitude or something of that nature; it is just an unfortunate health condition. The issue is whether there has been a degree of stabilization or recovery such that you could say medically the fellow was a good bet..

You could partly meet that and say, "Yes, he has a health condition that makes him too dangerous on the main highways, but at least we will allow him to drive around his farm."

I see the merit of that. I have indicated it to the board. It has been tempted to reinstate the licence, but having regard to the seriousness of the matter and the ability to go on any highway, on occasion the board has felt it could not go that far.

Mr. G. I. Miller: Does the record show that? Do you look back at them?

Mr. Meyrick: No. Do you mean in the particular case?

Mr. G. I. Miller: In these various cases, are there percentages for those who have had heart attacks or can bear these facts out, such as an accident rate?

Mr. Meyrick: Bear what out?

Mr. G. I. Miller: The record of heart attacks versus the accidents from them. Are there any percentages on that or on health-related accidents?

Mr. Meyrick: Of ourselves we have made no studies, nor do we have any statistics on that. There are all sorts of publications available about health-related accidents and so on,

but unless they are raised by a particular party in a hearing, we would have no better knowledge than any member of this committee or another segment of the population. We do not initiate studies in that direction.

Mr. Eichmanis: I would like a supplementary related to this. When you downgrade someone from a class A to a class B, D, or whatever,--

Mr. Meyrick: Let me make a correction. We do not downgrade anybody. We review the downgrading professionally.

Mr. Chairman: You confirm the downgrading.

Mr. Eichmanis: Okay, I am sorry.

Mr. Chairman: You are being defensive now.

Mr. Meyrick: No, about 20 per cent succeed.

Mr. Eichmanis: When you make the review and look for stabilization of a particular condition, do you then follow that up, or does somebody do that, to ensure that a year from now, six months from now, or whatever it may be, that condition has continued to be stable?

Mr. Meyrick: Yes. Sometimes we direct the reinstatement or the release we grant to the appellant. It may not be exactly what he wants; sometimes we compromise. He may want reinstatement of his A, but we give him back his B. However, very often we will condition our decision on monitoring the case with periodic medical reports supportive of his ability to continue to drive.

Mr. Chairman: When you put these conditions on, do you do it such that if the monitoring proves successful and he proves he is capable, he will get his A in the future, or only that he will continue to have his D? Do you take the conditions that far?

Mr. Meyrick: Allowing for the fact he did not succeed in his appeal in that he did not get back his A, but he got some other lesser licence--and by the way, usually that is by a dialogue between the parties. We examine his union position, his situation with the particular employer and the type of rolling stock he is required to handle. We take into consideration whether the fellow is going to lose his job as a consequence of having a licence or not. Very often we find he will not lose his job, providing he can get a lesser class of licence to drive some smaller vehicle. That is one question that begs an answer.

11:20 a.m.

Mr. Chairman: To be more specific, if a man has an A licence and he is downgraded to a G, and he comes back to you, and you decide to take him back up to a D--a compromise position--do you ever put on the type of condition that says, if he is monitored over X period of time and everything is successful and satisfactory, his A licence will be reinstated at a certain point?

Mr. Meyrick: Seldom, except that--

Mr. Chairman: But you have that capacity--in other words, an automatic upgrading?

Mr. Meyrick: I would say that any of our decisions by their nature legally must be without prejudice to a particular appellant driver being able to reapply at any time in the future.

I think it goes without saying that our decisions are not final in the sense that they are for ever, if the driver at some future time reapplies for a reclassification on new evidence or something of the sort. It goes without much difficulty that our orders are not in that sense for ever. They are on the immediate issue before us.

Mr. Chairman: Therefore, it is usual that you would take the compromise position up to a D and say, "He can retain his D as long as these conditions continue to be met." In other words, conditions subsequent. He holds what he has, rather than conditions precedent, where you say, "Here he is, and if these certain conditions take place or are retained, he will then move up."

Mr. Meyrick: Bear in mind that most of these qualifications listed in 462 are congenital and other types of serious health conditions, which by their nature do not improve. They do not allow a cure. The most optimistic medical approach is that they could be stabilized, but in many cases they will deteriorate with advancing age and with time. The best that can be expected is the condition will be stabilized, but it is possible that it may even degenerate to an even worse health condition. They are not by their nature curable types of illness.

Mr. Hennessy: I have a gentleman in my riding who was suspended for three years. I imagine he had a multitude of infractions. He was in the contracting business and tried to get a licence whereby he would be permitted to drive during the daytime.

Mr. Chairman: Mickey, could you get a little closer to the mike? Hansard is having a little trouble.

Mr. Hennessy: He went to see the Ministry of Transportation and Communications. They told him, no, he was suspended for three years and there was nothing much they could do about it. Is it possible for an appeal to be made to you people?

Mr. Meyrick: No.

Mr. Hennessy: Nothing in that respect?

Mr. Meyrick: No. The suspension is under the provincial court, automatic suspension section, for improper driving. The section is under the act; we have no jurisdiction.

Mr. Hennessy: The second one concerns your jurisdiction.

A person was downgraded and went to see his doctor.

According to what he told me, he has been cleared. He stated he sent the certificate to Toronto. They will not reinstate him because they said they did not get the certificate.

There is now an argument between them as to whether he sent the clearance down or whether he did not. I have written to your board and have not yet received a reply.

Is it customary for the doctor to send the report down, or does the patient pick it up and send it down?

Mr. Meyrick: First, they do not send it to us. We have nothing to do with the administrative process within the ministry. We are a tribunal.

As I commented before, in our function it has come to our attention that, initially, when a health case comes to the attention of the ministry, they send out a prescribed form to the driver asking him to go to his own doctor.

In your case, I think he did exactly that and the doctor filled it out. The doctor can do two things. He can either mail it to the ministry or hand it back to the patient. You get variations on themes because some doctors like to tell the patient one thing and write something else.

Mr. Hennessy: That happens a lot of times.

Mr. Meyrick: And for abundant reasons. But in the end, access to these reports cannot be denied to these appellants. You understand that. If that form got lost, and the ministry people said they never received it, I suppose it is solved by simply getting another form and getting the doctor--

Mr. Hennessy: There seems to be an argument on that part. Would you not be responsible for upgrading a person if he is at a certain category but wants to get up to another category.

Mr. Meyrick: If he appeals, yes.

Mr. Hennessy: Probably it went to your people. That seems to be the argument. Maybe nine times out of 10 the doctor still has it on his desk. It happens a lot of times that doctors do not send out the things. He tells them he has taken care of it. Then the first thing you know there is an argument between the two of them.

Mr. Meyrick: It is even more confounding than that. Would you believe you can have contradictory medical reports from the same doctor?

Mr. Chairman: Yes, I believe that.

Mr. Hennessy: It all depends on what kind of a night he had.

Mr. Meyrick: Sometimes one wonders if they are not tailored to the reader. It is a troublesome matter. We cannot say

every appellant walks away happy. They do not, but I would think that most walk away feeling they have had a good shot at it. The matter has been considered, perhaps not to their satisfaction.

Mr. Breaugh: There are a couple of areas I would like to explore with you. I have been intrigued for some time now with the way we license drivers. I am not comforted by the thought that this morning in Metropolitan Toronto there are 20,000 citizens on the roads with vehicles who did not bother to get a licence anyway. I am intrigued by the notion that there is one chance in 5,000 that somebody will stop them and ask them for a licence. When you go to the other end of the system where you are, there is a rather precise mechanism at work for defining who can get a licence.

One of my old bugbears is how simple it is in Ontario to get a driver's licence. I have a daughter who could not park to save her soul, but some fool gave her a driver's licence. My father is 86 years old. He is probably pretty safe in Napanee where he does most of his driving, but when he hits Highway 401, it is a real adventure. Do you have some concerns about the way we license people in the first place?

Mr. Meyrick: As a narrow response relating to our jurisdiction, the answer is no, save and except that a plea very often is made to the board by appellants to the effect: "You are taking my licence away because of the following health condition. I can point out five people out there who have complete loss of memory, who get in the car and start driving and forget where they are going."

Mr. Breaugh: I have that problem myself.

Mr. Meyrick: And there are variations on the theme. It is not uncommon for us to hear appellants say: "You think my case is bad. I can give you five others which are 10 times worse. Why do you concentrate on me and not go after these five more serious other cases?"

Mr. Breaugh: -I have a problem, for example, with licensing people to drive a motorcycle. The rule really is that if you can keep the thing relatively vertical around the pylons, you get a licence. I regularly see them going 10 miles an hour around the pylons in the parking lot at the Ministry of Transportation and Communications inspection station and then going out on the street and popping wheelies. There seems to be minimal standards for licensing. I wonder if that is not a better area to concentrate on than the system we now use.

11:30 a.m.

Mr. Meyrick: It could be. I cannot quarrel with that. I recall a case recently in which they took the A licence from a driver but allowed him to keep his M licence for a motorcycle. Of course, the A licence was under appeal and not the M licence. It strained our concept of priorities that he would be left to drive a motorcycle.

Mr. Breaugh: I was intrigued by your comments this morning about what a number of us have discussed for some time, and that is some kind of a restricted licence. A person could drive in a town but must stay off the roads in metropolitan areas. It is a concept we do use and one that I think you pointed out this morning crosses the minds of a lot of people.

Here is a person who, under certain restricted circumstances, probably could drive all right, but we do not want to give him a general driving licence. Do you think it would be impractical? The essence of my argument is essentially that once we give them a licence, they are virtually on their honour anyway.

The enforcement of the Highway Traffic Act is a very complicated, difficult thing. By and large, it does not work at all unless a cop stops the driver. I can drive any kind of vehicle out there until some police officer pulls me over. There is absolutely nothing that is going to stop me. I can be dead drunk, on drugs, incompetent, or physically unable. The whole system does not work until a police officer arrives at my vehicle.

Would it not be a reasonable suggestion that where we have an older citizen living in a small town, we make it a restricted licence? He can drive the vehicle in his community, but he cannot operate it on a major highway or outside a certain area?

We do it with truckers, with bus drivers, and with a lot of other people. Could we not implement that kind of thing? Would that not resolve some of the problems where you have people who really want to use a vehicle in a rather limited way and probably could do so but should not have a general driver's licence?

Mr. Meyrick: I would have to say yes but, again, weight must be given to the obvious argument against so doing, and that is, principally, the problem of enforcement. The honour system has worked in some areas. Speaking not as the chairman of the board but as an individual within the province, I am a great believer that regulations should be passed with great caution, as benefits the administrator, but should really be motivated by the needs of the public. If the administrative problems arising from such a licence are really the concern, one would have to look to see if the public benefit would not outweigh those disadvantages.

It is not for me to say how the scales tip in that situation. All I can say is it is tempting to look at the situation. You, as members, and the Legislature as a whole are doing exciting things. You are passing new legislation for the carriage of goods. The Ontario Highway Transport Board is going to have a new philosophy, and I know part of that philosophy will include looking at licences locally.

I guess the same points in opposition could rest there. How are you going to enforce X number of licences in one area and Y number of licences in another area? Or what is your justification for the distinction in the numbers of licences, and so on? Of course, it depends on the local condition, the traffic, and the number of carriers in that locale. These are very difficult things to administer, but there is evidence that the province is going to

try it in at least one other area. Maybe this could be another area where it could be tried.

Mr. Breaugh: Do you have any comments on something that has been tried in other jurisdictions--in fact, it is done here in Ontario--marking the licence plate? In some American jurisdictions, for example, if you are convicted of drunken driving, you get a special sticker for your plate that identifies to the world that this person has at least been convicted of an impaired driving offence. In Ontario, the only thing we have that is close to this is that we issue special plates for the handicapped, essentially for parking purposes, I guess.

Have you any comments on attempts to do things like that to identify drivers who have a particular problem?

Mr. Chairman: I could comment that yesterday Mr. Breaugh quoted the Charter of Rights. I am sure he could answer his own question if he would just refer back one day.

Mr. Watson: There is a lawyer.

Mr. Breaugh: I do not need a lawyer this morning. I do not need lawyers until later on in the day.

Mr. Meyrick: I see no great aid to the function of the board in such a program.

Mr. Breaugh: It really is an extension of the idea that you would hear an appeal and put some restrictions on someone's licence, someone's ability to use a car, or identify that person as someone who has a particular need or problem.

Mr. Meyrick: If wiser minds than ours felt that our jurisdiction should be increased to include restrictions, perhaps that would be a factor to be considered.

Mr. Breaugh: Let me go to a couple of other areas that are of concern to me. The concept of a motor vehicle inspection process is one that I have some great concerns about. I do not think the public really understands what all of that is about. In my mind it tells you that a vehicle is safe to operate while it is still in the garage, but the moment you put it on the road that inspection really does not apply.

Do you run into a lot of problems with approving those inspection stations and that kind of licensing?

Mr. Meyrick: If I could put that in another context, it comes before us when the ministry, through its director of that program, proposes to revoke a licence and it is appealed.

Those licences are twofold. There is a licence on the station, It could be a limited company, and as an adjunct it must have one or more licensed mechanics. So yes, our board is greatly concerned about the instances that are coming before us in which safety standard certificates are improperly issued.

Mr. Breaugh: As one who sat on the committee that began this process, I still have the same concerns about it. I think what we have done is to convince the public that there is an inspection process at work here, and yet the limits on that inspection process are not well known.

I recently had a case where a fellow was selling used cars. He was getting them approved and licensed by his bother-in-law or somebody in Smiths Falls. We went through the process of how we tried to track down where somebody is clearly abusing the system and it is very hard to nail them, because the licence is so restrictive, so tight, that it says this is a safe vehicle while it is here, but take it out on the road for 48 hours and the guarantee that it is a safe vehicle does not apply at all. Simply transport a vehicle from one place to another and it is pretty tough to convict somebody.

11:40 a.m.

Mr. Meyrick: There is a hiatus. For example, there may be a complaint or some other reason why the safety branch of the ministry receives notice of a vehicle requiring inspection. When the ministry people examine the vehicle, it may turn out that there has been a time lapse. There has to be a time lapse, if for no less than hours, but very often it is several days later when they inspect the vehicle.

As expert mechanics, they must examine that vehicle on one day and be prepared to say that back last Wednesday, when the safety standards certificate was issued, this condition existed and it could not have occurred in the time lag. That time lag, the point you raised, is the principal defence most commonly heard in every case. "The defect occurred after we issued the certificate."

Mr. Breaugh: That is right.

Mr. Meyrick: That is an evidentiary matter. The cases we have heard are replete with situations where we have been satisfied that the mechanical problem could not have occurred. It was not a consequence of an accident or some impact or something of that kind. It was a matter of simply wearing out. Then you get into all the normal situations, as lawyers do, about the physical condition and ask, "Could it not have happened at the time?"

Mr. Breaugh: I have great concerns about the process and I also have concerns about what is actually being inspected here. The truth is, if people want to get a certificate, they can probably find a garage where somebody will walk around the car and say, "That is just fine," sign the certificate and away they go. Then they can sell the car and the person who buys it is assuming it has that little stamp of approval we put on it, which says the province of Ontario says this vehicle is safe.

People assume that car is okay. They do not bother to read the fine print and they are not aware of the process. If they buy a vehicle from a reputable dealer, they are probably okay, but it is an area where there are sometimes not very reputable people and there is a fair amount of money to be made.

Mr. Meyrick: As I indicated before, it is an area that can be abused. Our board is concerned about it because of the degree of seriousness of the abuse in the cases we hear.

Mr. Breaugh: How many cases do you hear a year?

Mr. Meyrick: These are section 79 cases. Last year we reported on our form that we heard 78 appeals. That would be about 31 sittings.

Mr. Breaugh: That is fairly active.

Mr. Meyrick: I guess about 20 of those would be section 79 cases. They are highly characterized by legal participation. It is an economic matter. You hit the fellow in the wallet and he will mount a full-scale defence. These cases tend to go on and on. We have sat as late as eight o'clock at night sometimes.

Mr. Breaugh: I also wanted to get into the whole field of driving instruction. A few years ago we went through an exercise of whether there should be even more restrictions, qualifications, certifications or licensing of driving schools. That area is pretty minimal just now. Do you have any comments on that? Is it a very active part of your work?

Mr. Meyrick: We were alerted some considerable time ago that there was a possibility of our jurisdiction being increased to hear appeals from suspensions of driving instructor licences. For one reason or another, that has not come into place. Beyond that, I do not know.

Mr. Breaugh: So it is not a very active area with you.

Mr. Meyrick: It seems it has passed into history.

Mr. Breaugh: It is nil.

One thing most members are familiar with is the wonderfulness of the Ministry of Transportation and Communications computer: what happens when someone who has paid fines has his licence suspended, and what happens when drivers' licences are downgraded. Aside from the medical evidence you might weigh, there seem to be a lot of administrative problems that cause people to lose their licence. Do you pick up many of those?

Mr. Meyrick: I cannot recall a case.

Mr. Breaugh: You do not get them at all?

Mr. Meyrick: In 10 years' experience I cannot recall, if I understand you, such a case.

Mr. Breaugh: I get a steady flow of people who have been notified that their licence has been suspended because they did not pay a fine or something. They come in with ample evidence that they have paid the fine. To establish that the Ministry of Transportation and Communications made an error somewhere is a very trying process. Once a mistake has been made in the computer,

to correct it is really a test of your patience. You do not get people who have experienced that?

Mr. Meyrick: No, we have never had a case, for example, where the unfavourable medical report of Mr. A was mistakenly applied to Mr. B or where there has been a mixup of medical information. I have never had such a case, nor have I ever had a case where a safety standards certificate was alleged to be issued by a particular station when it was really another one.

Mr. Breaugh: I have had all of those. I get them on a regular basis.

Mr. Meyrick: It has not occurred.

Mr. Breaugh: As a matter of fact, the last time I went to renew my licence they had my licence plate on the wrong car. It took only about an hour to straighten that one out, but it is a frustrating process to deal with the ministry. You do not see any of that?

Mr. Meyrick: No.

Mr. Breaugh: I wonder how many people actually understand this process and know there is a Licence Suspension Review Board. How do they find that out?

Mr. Meyrick: When a decision relating to our area of jurisdiction is made by the registrar or the ministry, a caution is contained in the letter, saying, "You may have an appeal to the Licence Suspension Appeal Board." In the cases of drivers whose authority is being revoked and/or suspended, they get a notice of our existence. As a matter of fact, largely at my urging, a form of appeal is enclosed.

Mr. Breaugh: So they have an opportunity when they are notified.

Mr. Meyrick: Beyond that, the general knowledge of the population would just be a matter of being informed.

Mr. Breaugh: Would your board hold that no matter what the ministry did with someone's licence the person should always have an appeal to you, whether the licence was revoked or denied or whatever, that question that we were discussing earlier?

Mr. Meyrick: I would not think so. There is a standard of reasonableness beyond which you should not go. It becomes a legal matter. It is always a mystery where you draw that line, but up to that point it is administrative. Every administrative matter cannot, in practical terms, be regarded as a matter for appeal and, indeed, may not directly involve a person's rights.

Mr. Breaugh: There is one other area I wanted to explore with you. It is something we find with a number of boards like yours. Earlier you mentioned the entrance of the lawyers into a situation. We have this little problem where we are anxious that people be allowed, encouraged, whatever, to use legal counsel. The

problem is that we have a number of agencies set up now which were really not meant to be law courts. They were meant to be appeal tribunals or whatever where an ordinary citizen can go, state his or her arguments and where he or she does not need a lawyer. The growing practice, of course, has been to seek legal counsel. We wind up with minicourts or whatever. When the minicourt is through, then they go to the real court.

Do you have any comments on that? Should we be encouraging the use of lawyers in this kind of a situation or--and I do not quite know how we do this--should we be discouraging that process?

Mr. Meyrick: That is a motherhood issue, but let me try to handle it as best I can and as tactfully as I can.

Mr. Breaugh: Without prejudice.

Mr. Meyrick: All lawyers are good, good to excellent. Some are just a little more excellent than others.

11:50 a.m.

Mr. Breaugh: We have heard that about equality, too.

Mr. Meyrick: I jokingly referred to the expansion of time as related to the number of lawyers involved. We are an administrative tribunal. The right to drive is a privilege, but it is so nearly a right it is indistinguishable to most people.

Even if they know in their hearts there is merit in their disqualification, people who lose their licence are very aggrieved because of the tremendous impediment and restriction placed on them. In many cases, and I suggest it is the case for most of us here, the need for a licence is almost absolute in today's society. So these things tend to be very emotional. That degree of reaction would prompt them to seek legal counsel.

The economic impact of loss of a licence has constantly been brought before our board with respect to loss of employment, or at least diminished salaries. For example, you must remember that in the cases of downgrading, at the work place there are negotiated agreements, unions and insurers in place.

We get a variety of employees who need licences for their jobs. Sometimes there is an issue of a subrogated right and there are interests other than the driver's. So a very sophisticated defence might be mounted with respect to legal talent, expert witnesses and so on. That case would be quite remarkable compared, say, to the average case.

I do not know what the board should recognize from this. We certainly cannot be critical of it, but we know that if an employee cannot drive the vehicle in certain circumstances, then maybe he goes on disability pension. This would have an economic impact on an insurance program and on employers. We recognize these things are all important to various levels, and yet it is all mounted in an appeal by an individual. We cannot be critical of that and, in fairness, we would have to recognize levels of interest.

Mr. Breaugh: We are now becoming aware of a problem with a lot of agencies such as yours, boards that are basically arbitrating somebody's decision. In fairness, no one wants to deny anybody's right to hire a lawyer and have a professional represent that person. However, the moment we do that it spurs on the other side and they want to beef up their legal talent as well. Whereas the initial idea was to set up some quasi-judicial bodies to hear such cases, the pattern is pretty clear they are becoming more and more judicial in nature.

Maybe we would be better letting those people go to courts directly rather than through some tribunal. It is becoming a bit of a problem.

Mr. Meyrick: I do not think matters before our board reach that stage. There is no real disadvantage to an appellant who comes before us without a lawyer. On the contrary, I think most members of our panel would bend backwards to pursue a matter even further if an appellant does not have the benefit of counsel.

Mr. Breaugh: That seems to be the crux of the problem. The difficulty is that a lot of people are going off to tribunals for whatever purpose. The tribunal is introduced as a place where he can appeal a decision, whatever it might be. When he arrives, he soon finds it hinges on a point of law and he does not have a lawyer. In many instances, the case is being heard by people who are trained in the law; certainly, the ministries have their legal staff there, so he is put at a disadvantage.

What is happening is people are saying: "I am going to be faced with the law in the final event. I had better get myself a lawyer." There is a recurring problem that what would seem to be an expeditious way to deal with these appeals is turning out not to be quite so expeditious. It is a difficulty.

Mr. Meyrick: Formal defences in cases appearing before us are increasing. I do not know whether that assists you. I do not know precisely why that is occurring. I know we are at a stage in history when matters of civil rights and the interests of the individual are greatly intensified in certain areas and I know the population of lawyers has greatly increased.

However, I also know the population of drivers has greatly increased and, therefore, the number of revocations and suspensions is on the increase and the number of appeals is proportionately on the increase. If at present there are 40 out of 50 cases with lawyers presenting elaborate defences, that would equate to four lawyers in five cases 10 years ago.

Mr. Breaugh: I do not know why it is, but the lawyers always seem to win even when they lose.

Mr. Chairman: We have to keep some of them off legal aid in some way.

Mr. Villeneuve: I do not know whether this is in your area of jurisdiction. By the way, I have three valid driver's licences. I went from A to G to D or whatever it is. I guess it

has something to do with blood pressure, but that is a story for another day. Is the licensing of mechanics who inspect propane-powered vehicles in your jurisdiction?

Mr. Meyrick: We have no jurisdiction over that. I have very little knowledge of the subject, and certainly I have no knowledge by reason of being on this board.

Mr. Villeneuve: I realize there is some connection with the Ministry of Consumer and Commercial Relations and with the Ministry of Transportation and Communications. There is a problem in the area I represent. If it is not your jurisdiction, that is fine.

Mr. Meyrick: I do not know any more than what I read in the newspapers.

Mr. Chairman: Are there any other questions? I do not think so. Thank you for appearing before us this morning and helping us. As with most hearings, you can really read into the questions where the concerns are. They seem to fall quickly into a pattern of the concerns the members see in their offices, such as downgrading and so on. We will be going through this and coming up with a report and it will be sent to you.

Mr. Meyrick: I want to thank you, Mr. Chairman, and the members for this opportunity and for your courtesy this morning.

Mr. Chairman: Not at all. Thank you. We will reconvene at two o'clock, in camera, to consider our preliminary recommendations for the report.

The committee adjourned at 12:01 p.m.

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STANDING COMMITTEE ON PROCEDURAL AFFAIRS

REVIEW OF AGENCIES, BOARDS AND COMMISSIONS:
ASSESSMENT REVIEW BOARD

TUESDAY, FEBRUARY 19, 1985

Morning sitting



STANDING COMMITTEE ON PROCEDURAL AFFAIRS

CHAIRMAN: Treleaven, R. L. (Oxford PC)
VICE-CHAIRMAN: Watson, A. N. (Chatham-Kent PC)
Breaugh, M. J. (Oshawa NDP)
Charlton, B. A. (Hamilton Mountain NDP)
Cureatz, S. L., (Durham East PC)
Edighoffer, H. A. (Perth L)
Kells, M. C. (Humber PC)
Mancini, R. (Essex South L)
McNeil, R. K. (Elgin PC)
Miller, G. I. (Haldimand-Norfolk L)
Rotenberg, D. (Wilson Heights PC)
Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Substitutions:

Hennessy, M. (Fort William PC) for Hon. Mr. Kells
Pollock, J. (Hastings-Peterborough PC) for Hon. Mr. Rotenberg

Clerk: Forsyth, S.

Assistant Clerk: Decker, T.

Staff:

Eichmanis, J., Research Officer, Legislative Research Service

From the Assessment Review Board:

Bowlby, B. H. B., Chairman
Hewson, G. C., Vice-Chairman
Murphy, T. G., Provincial Registrar

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON PROCEDURAL AFFAIRS

Tuesday, February 19, 1985

The committee met at 10:10 a.m. in room 228.

AGENCIES, BOARDS AND COMMISSIONS
(continued)

ASSESSMENT REVIEW BOARD

Mr. Chairman: Gentlemen, we have a quorum.

We have with us today the Assessment Review Board; Mr. Bowlby, Mr. Hewson and Mr. Murphy. Perhaps one of you is going to be the spokesman. Perhaps Mr. Bowlby. I understand Mr. Murphy is to the north and Mr. Hewson to the south.

Do you have an opening statement of any kind, either written or oral?

Mr. Bowlby: It will be very brief and oral, Mr. Chairman.

Mr. Chairman: That is fine.

Mr. Bowlby: The Assessment Review Board is, as you know, an independent administrative tribunal set up by statute, by the Assessment Review Board Act as it stands amended today. We are charged with the responsibility of hearing complaints against assessments and other matters, under the Municipal Act and the City of Ottawa Act, to achieve equity in assessment on a comparison basis under the Assessment Act.

That is very briefly stating the situation. The complaints against assessment are filed with the board, are scheduled and, as soon as may be practicable, are heard in the municipalities across the province where they arise. We deal with apportionments for tax matters, splits of assessments under the Municipal Act, complaints against taxes for poverty or exemptions that may arise during the year, or with demolitions under the Municipal Act.

We deal with adjustments to increase taxes at the request of the municipalities and appeals to adjust redevelopment charges under the City of Ottawa Act. That came in about two years ago. Those are redevelopment charges where new enterprises are undertaken, with certain exemptions. A considerable number of those are heard each year, in two sittings specifically.

That briefly is the outline of the board's work. We have some 71 members and for our purposes calculate on the basis of 65 members being available most of the time. They are scattered across the province, region by region, and are available to sit anywhere in Ontario.

Mr. Chairman: Fine, thank you. The members will ask you some questions.

Mr. Breaugh: I appreciate the chance to talk to you for a while this morning. One of the major concerns I have is the volume that is there. It does not seem to be getting better but perhaps it is even getting worse.

What are you doing to try to address yourself to the problem of the number of people who want to get in front of the review board?

Mr. Bowlby: I would say a review of the complaints file in the last five years, made by our staff, has shown we are consistent in disposing of approximately 155,000 complaints a year.

The complaints have risen steadily from 55,000 in 1975 to 83,000 in 1976, when I came to the board, and have increased now to approximately 163,000 complaints a year. Of those, the bulk has been disposed of. The backlog that appears in the figures has come about as a result of several matters having been deferred, not scheduled, or hearings not completed pending decisions of higher courts, particularly in matters of law affecting the interpretation of the Assessment Act.

The principal example of that is the backlog of some 51,000 condominium complaints, which have been held up for the past two to three years pending the final decisions on the Peel condominium matter, which has stopped at the Divisional Court, leave to appeal to the Court of Appeal having been refused. The Ministry of Revenue has followed that up with a reappraisal of its policy in connection with condominiums as a result of that decision.

A delay in the return of the rolls this year in Ottawa-Carleton, Metropolitan Toronto and Halton and Peel, where the bulk of the condominium complaints have been, has been to enable the Ministry of Revenue to review its policy and make adjustments. That has been completed; the returns of the rolls are complete now. The last day for filing complaints in those regions has passed, and we expect to be able to schedule all that particular line of outstanding complaints as soon as practicable now.

The others that have been delayed that create the apparent backlog have been similar isolated instances. Those are the particulars.

Mr. Breaugh: One of my concerns about this process is that it is complicated; it is not easy to understand. It began that way and it seems to me it has extrapolated itself into a system that is not working at all. It is grinding to a halt.

I am aware that the board can muster a pretty good argument that it tries to deal with the complaints as it gets them, but still, a system that generates 160,000 or so reviews a year appears to me to be a system that is not functioning. The nature of government is complicated these days, but still I cannot think

of another agency we have reviewed that has such a high volume, and the problems seem to be getting worse instead of better.

For example, you quoted the condominium problem. When that problem began, it began as a difficulty for some individuals who thought they were being taxed unfairly. It is turning out to be a major problem now for whole municipalities, which are \$5 million or \$6 million in the hole, money they have to find, do not have and have to pay back.

It appears to me that there will be further appeals to those decisions in some way. It just seems to me we have got ourselves in such a complicated mess here there is ample indication that the whole system is coming down around our heads no matter what we might do. It seems to get worse instead of better, and I would be interested in the board's comments on that set of problems.

Mr. Bowlby: That is why I mentioned the condominiums specifically, Mr. Breaugh; that has been of concern to us. I was particularly interested in the figures that showed the annual disposition to be consistent within these last four to five years with that exception.

I will ask Mr. Hewson to comment on the particular scheduling of that, because he is primarily responsible within our organization for the allocation of members and the scheduling of particular matters of a complex nature.

Mr. Hewson: Outside Metro Toronto we are not in arrears at all. The trouble is with Metro. I do not know how you would treat it. It is almost 40 per cent of our volume throughout the province. All the complicated cases are here.

It seems all the problems and difficulties arise in this area because of the big development: Halton-Peel, Durham region, within the area of Metro. But outside Metro, in the rest of the province, every year, as far as I am aware, we clean up everything we have in time, unless there is a complicated matter that is adjourned by the solicitors involved.

As an example, the Ford Motor Co. matter in Windsor is not resolved, because the lawyers cannot get together even to set a date for when they want it heard. Aside from these special, complicated cases outside Metro, they are all being disposed of each year.

10:20 a.m.

Mr. Breaugh: Are you making an argument that the only place in the province with this problem is Metropolitan Toronto and the surrounding area?

Mr. Hewson: The big volume is restricted to the Metro area. I do not think the number of complaints has increased dramatically in the rest of the province, unless there is a reassessment. When there is a reassessment, you get a dramatic increase for two or three years and then it levels off again.

Mr. Breaugh: Let me move to a slightly different aspect of it.

In a lot of places I have been, people are pretty fed up with this whole process and are not very happy with the Assessment Review Board either, I might add. I will pick a couple of examples outside Toronto.

In Niagara Falls I met with a group of very angry people who had gone through the process. There had been a move to market value assessment. There was great confusion and a lot of hostility. None of the people I met with felt they had been treated fairly. Frankly, it struck me they did not understand the system, either.

I encountered the same thing in Newcastle, with a different group who had gone through this process and, at the end of it, were very bitter they did not get their day in court. They felt they had not been treated fairly and things had happened which should not have. There were a lot of really bitter feelings towards the Ministry of Revenue, the process, the municipality and government in general. In other words, it was giving government a very bad name.

I suppose we could go on and on with other examples from other localities, but from my experience the process is not a good one. It is not working well and my real belief is that, if it did, at the end of it all concerned should feel good: "I do not agree with the results, but I had my day in court. I had a chance to say whatever I wanted and lost." However, that is not the impression I am getting.

In the Kitchener area, for example, where there was a similar kind of thing, people said: "I thought I was going to get a chance to state my case. I went to a school or a municipal building and I was lined up with 300 people. I got in there and they changed the rules. I thought it was just an informal thing. I found I was up against the whole Ministry of Revenue. The deck was stacked against me."

I would like to hear your comments on how you are trying to deal with this, because I am sure you are aware people are unhappy out there.

Mr. Cureatz: Mr. Breaugh, if I might briefly follow up with respect to the general concern. You certainly have pointed out areas of problems across the province. Newcastle went through a trying time with fair market value assessment, with a number of interested groups. The chairman and I indicated the number of appeals you just told the committee--was it some 162,000?

Mr. Bowlby: Approximately.

Mr. Cureatz: My gut feeling, and Mr. Treleaven's feeling, was that it is horrendous. When you have that many appeals going through your organization, something is not working right.

I always think in terms of law and court. You have your final appeal for one last kick at the can because there is something in the meat of the situation that merits appeal. However, one would think you would be able to smooth over the run-of-the-mill things, with respect to what Mr. Breaugh was centring in on.

With all due respect to the assessment people at Whitby, and Wally Parnell is one who is running it, I have been frustrated because they do not seem to be bouncing along with the general situation.

I suppose this is not your area and maybe we will have to make other recommendations, but I should not be getting phone calls and complaints. I find the person doing the assessment seems to be very narrow-minded, very restrictive. I am a humble lawyer from a little village, but when I get my constituents sitting across from me and they explain the situation as I see it and with reference to what I consider fair property prices across the area, I tell them point-blank: "That is a fair price. There is nothing I can do about it."

I never lead a constituent down the garden path, as they say. I always tell them exactly where they are. I have practised law. I always thought it was better to tell people their particular situation. There is no use giving them a great song and dance and five months later they come back to you mad as heck, or as some would say, mad as hell.

Notwithstanding that, I really think the committee should consider the number of appeals to your board and ask the first question, "What is happening at those assessment offices?"

Are those people taking control over listening to the people's complaints giving enough latitude or do they need a greater scope in legislation to allow them to have some variance? Take the example of agricultural land that has been rezoned as a single lot, although there is one house on 50 acres. The people try to appeal, but they did not realize they had their assessment notice and they pitched it in the garbage. They go back to the municipality, which might have some power to say, "Yes, it was agricultural and you can have your taxes back," but the municipality does not do it, so they are angry. Quite frankly, I do not blame them sometimes.

I am just running off at the mouth at the moment, but I have had some frustrations. Should I keep going and fill in the time? Is that what you are trying to tell me?

Mr. Breaugh: I think you have some sense now that the members are hearing complaints from constituents who are saying, "This system does not work."

Mr. Cureatz: Right.

Mr. Breaugh: "It is not fair. I did not get my day in court." That concerns me because we have a board here that is established to give them their day in court.

I would like to get your perception of whether that is right or wrong. If it is right, and I certainly believe it is, I would like to hear your point of view on where the system is wrong and what we could do to make a better, fairer system.

Mr. Hewson: If they are not getting their day in court, we want to hear about it. You mentioned specifically Niagara Falls and Newcastle. We can only judge what is happening by letters of complaint we receive. To my knowledge, and I can be corrected, we did not get one letter from the Newcastle area or one letter from Niagara Falls complaining about the activities of our tribunal.

Mr. Breaugh: This may be one of the things that is going a little askew here. You say your criterion is people who sit down and write you a letter. I have to tell you that the 100 or so people I met in Newcastle were in no mood to sit down and write you a letter. They might dangle you at the end of a rope, but they were not about to sit down and write you a warm, heartfelt letter. I found the same thing in Niagara Falls.

These people were thoroughly disgusted at the system, as they called it. They had done what they thought they were supposed to do. They were unhappy with the results, but they were also angry because they felt the system was loaded against them. When they got before the board, they felt they did not get a fair hearing. The rules were different from what they had anticipated, rightly or wrongly. They were not only upset that a decision had gone the wrong way; they were mad as hell.

With all due respect, I do not think it is reasonable to expect these people to sit down and say in a calm, analytical way, "I do not think your system was right." They were fed up with government, to put it bluntly. They were not about to have any more correspondence with you.

Mr. Hewson: We have certainly heard from some people in the past who have been unhappy with the conduct of our members or the hearing, but we did not receive any complaints from those specific areas.

Mr. Breaugh: Your members read the local newspapers. You must be aware there are ratepayers' groups that are getting organized now. They are angry and are having meetings all over the place. They are giving out T-shirts and they have their own stickers and buttons. If they are not writing letters, they are doing it in every other way possible.

Mr. Hewson: Are they angry with us or with the assessment system? We do not generate the complaints. They are generated by the activities of the assessor, whether such activities are good or bad. The volume is there because people are not happy with the way they are assessed. It is our duty to see if they have been accurately assessed.

I think a lot of the problem with people is we are bound by subsection 65(1) of the Assessment Act. Unless a property can be shown to us to be unequally assessed in relation to similar properties in the vicinity, and under the act the onus to do that

is on the property owner, we are not allowed to alter the assessment.

Mr. Breaugh: I wonder if this might not be one of the problems. I happen to be the critic so I am a little more familiar with the process than some people might be.

You walk into a board of one, two or three people you have never met in your life and they tell you, an average home owner, you have to provide a professional argument against someone who does this for a living, who works with the act every day, who is an assessor, who knows how to play the game. You are supposed to argue with the assessor on an equal basis.

I do not think that is a reasonable premise, for starters. That is like saying: "You are free to come to court, but we have charged you with shooting somebody. On our side we have the entire Supreme Court and on your side you can bring in the stickboy for the Maple Leafs," and assuming there is going to be a fair judgement. I think that is one of the problems.

10:30 a.m.

Mr. Bowlby: If I may I digress along that line, members are at seminars once a year at the opening of the season--and seminars will be starting in a couple of weeks--to deal with these matters that arise. Every year the members are instructed, advised, guided and assisted to give any complainant a full hearing. By and large, most of them get it.

Occasionally, we come to an adversarial system where the assessment branch of the Ministry of Revenue has engaged counsel and sometimes that can be overpowering to an individual complainant. In that case it usually is not a serious matter on an individual basis. The members are aware of that and respond accordingly from the instructions we give them to make sure the complainant has his hearing and his full day in court.

He is able to engage counsel if the matter warrants it. We do not advise that. We cannot make his case or instruct him how to handle it, but our members are repeatedly advised how to handle situations such as that.

It is awkward when the complainants do not appreciate the assessment system and when they have not taken advantage of the open houses to discuss the matter with the assessment branch before the hearing. We are charged by the language of the Assessment Act to compare similar real properties in the vicinity.

Mr. Breaugh: Do you make recommendations to the ministry about things you see causing problems?

Mr. Bowlby: Yes, on occasion.

Mr. Breaugh: Let me give you an example of something I think is absolutely atrocious. There is a practice in the industry that has got to the point where they try to make it legitimate by

giving it a term; they call it windshielding. People go bananas when they find out this means an assessor drove down the street. They get particularly angry that somebody is able to drive down the street and change the value of their properties on the tax rolls. If they do not complain, it stands. If they do complain, the assessor probably has two or three months to go away and write up something that will stand up in court.

From the individual's point of view, it is a situation in which he cannot win. If he complains about it, he moves another notch in the system. He probably will not complain about being windshielded. That means somebody drives down the street and says one house is worth \$10,000 more or another is worth \$5,000 more. It is a totally untenable way to proceed, but it is a practice that stills occurs.

When the defence mechanism clicks in and an appeal is lodged, the assessor has time to write out a detailed defence of his judgement in language the population does not understand, following the lines of an act the public has never read. Any professional in any field worth his or her salt can do that. If a person tells an engineer to build a bridge in a certain place and his first reaction is that it is the wrong place to build it, but the person still wants to build there, the engineer will design a bridge for that location, no matter what.

The system has a lot of faults and we have to correct them somehow. I do not know whether we should start with your board, which is somewhat limited in what it can do. There are problems that have to be sorted out. I would like to hear what comments members of your board bring to the annual meetings that you report to the minister.

Mr. Bowlby: They bring the very comments you have made, Mr. Breagh. They run into this from time to time and we hear about it immediately. They telephone us and let us know in Toronto or wherever it may arise as soon as possible. We certainly invite those questions at our seminars.

This is made-known to the Ministry of the Attorney General. The assessors are aware of what the situation has created and I assume they report it to their commissioners and representatives to have it dealt with. We are very aware of it. There is not a member of our board who has not run into that situation and who has not been alerted as to how to handle it.

Mr. Breagh: How do they handle it?

Mr. Bowlby: They give the taxpayer full opportunity to prepare his case further. They can adjourn at that time and discuss it with the assessment branch then and there, or they can adjourn to a later time within the assignment of that member, who may be there for a week or two weeks, to prevent it from going on indefinitely. There are several ways along those lines that they handle it. I cannot give you a specific outcome of any particular one. It comes out when the end result of the list is completed.

Mr. Cureatz: It is too bad the board cannot send a signal to the assessment people. I am as frustrated as Mike is. Actually, you are limited in what you can do. We appreciate that. They appeal to you.

Back to the letter-writing business. No one is going to write you people letters, generally speaking. They do not know who you are. You are not the focus of attention. It is like writing a judge a letter. How many judges get letters? Not very many. I advise those constituents who come to me on the way to send a letter to the Attorney General. You are not going to get the letters.

It is difficult for us to be telling you how you should make your decisions. You just brought to mind, in response to Mr. Breaugh, about twisting the arm of the various assessment departments, saying: "Look, guys, we have 162,000 cases a year. This is getting out of hand. This is not a make-work project. If it is a make-work project, it is up to the new Premier to decide where he is going to spend the money. You guys get the hell back to the assessment office and start hammering out this thing."

That is just an approach, but it is something that crossed my mind you could be thinking of doing. Any thoughts on that?

Mr. Bowlby: At the risk of treading on another ministry, I would say the section 63 program, the reassessment at market value under section 70 by proclamation or under 65 by request from a municipality, has gone a long way to clarifying and clearing up these problems.

Mr. Hewson referred to the second year of these programs--that the equity in assessment is apparent as soon as the second-year program is in effect. I would support the section 63 program completely, and I have said so in correspondence with the former Attorney General. We are very limited in the comments we can make.

Mr. Breaugh: I have a couple of other areas and then I will give others a chance to talk to you.

One of the things that concerns me is that there is a growing practice of involving not lawyers but kinds of advocates in the assessment process, sometimes municipal alderpersons and sometimes people who are familiar with the act. There is beginning to be a little growth industry of people who will do assessment appeals for others.

Initially, I saw this as being a good thing and I probably still do. It concerns me somewhat that there is now a group of quasi-lawyers--God forbid we should have such an animal--emerging. They know the act and what the board is all about and they know how to function there.

One of the things I have noticed about a number of agencies is that when the public arrives at their door, the first step is to be rather casual, and this is the way it should be. These are

supposed to be quasi-judicial agencies. But the moment an advocate appears, lawyer or otherwise, everybody changes gear. Everybody gets a little more formal. They decide there are now rules to the game and they start changing the rules.

What I initially thought was a good thing of advocates helping people with these assessment appeals now takes another turn. It is a little more complicated. They say there is an advocate, and whether he is a lawyer or not, there are sets of rules and they change the rules about what evidence can be presented and what cannot be. Instead of helping the process, it turns it and gives it a different twist.

I would like to hear your comments about that practice and how will we categorize them, these advocates or people representing citizens sometimes for a fee before your board.

Mr. Bowlby: I will ask Mr. Hewson to elaborate and reply to that. We have provision for assignment hearings to deal with this particular problem. That is where it is used mostly.

Mr. Hewson: We are getting more and more complicated matters before us because of the state of the economy. Large corporations that have paid their taxes in the past without even looking at the bill now look at it. They are hiring professional agents, solicitors, to argue these matters before us. As a result, the Ministry of Revenue puts in its lawyers. Instead of the people's court, as we are supposed to be, we become almost like a court of law with almost strict rules of evidence and procedural matters, and that is the way they want it.

10:40 a.m.

They turn it into an adversarial system. This does not apply to what we call regular complaints for residential houses. These are shopping centres, hotels, large industries, high-rise apartments, etc. That is growing, I agree, because of the system and the fact that people are now looking at their taxes.

Mr. Breaugh: Let me just give you one final thing that sticks in my craw. I, and I am sure you, have run across a number of what I think are really obscene things going on here, such as major oil companies in the middle of a major urban centre with storage tanks that are classified as farms. It is absolutely ridiculous and the thing holds up.

This is where I have a little problem. Having read the act and understanding this process a little bit, I understand that when these people come before you or go to court or whatever, the act is being followed, but it leads to completely nonsensical results.

In Newcastle a family had a little family farm. Circumstances around them have now changed dramatically. What used to be the boondocks of Newcastle now happens to be a very popular residential area with rather large estates being built on it. They have not done anything to their property in 20 years. They have

made some minor improvements and so on. Their taxes went up about 150 per cent. They went through this process. They do not understand what happened here at all.

Basically, my judgement would be that the act was followed to the letter and the decision was--how do I say it?--legally correct and morally obscene. We are getting a number of situations like that. We may be following the letter of the law here, but clearly something is wrong. There appears to be not much of a way to rectify it.

Do you make recommendations to the ministry when you hold a hearing and you are following the letter of the law and everything is being done properly, but the end result is something which is clearly wrong? There appears to be no way to rectify that.

Mr. Bowlby: The answer to that is that the complaint arises first. It is first heard. Any decision made by our board is certainly noted by the Ministry of Revenue which is responsible for the assessment. If there are any anomalies, inconsistencies or obvious errors, I am quite confident the assessment branch looks into those and deals with them in the practical assessment way, in its manual situation. There are not too many instances that do arise in any one year.

To take it one step further, an appeal from our decision goes to the Ontario Municipal Board and it is a fresh hearing. A decision of the Ontario Municipal Board would extend only to the value, the quantum, of the hearing. They are bound by the application of the law, the Assessment Act and the case law as it may apply.

If there has been an error in the hearing at that level, there is the judicial review process of the Divisional Court. If there is a point of law, it is open to all the parties to take it, by way of an application, to the district courts or the Supreme Court. That can be a slow process in determining a question of law.

The decisions that have come out are reflected in policy changes by the Ministry of Revenue in the assessment branches. We learn of those directly as soon as there is a policy change of that matter, but it can be a process that extends up to five years if it goes as far as the Supreme Court of Canada.

Most of them do not reach that stage. The larger and important ones do. I am unhappy that the Peel condominium case did not go further, but that is a matter of learned judges making a decision. That would have been my wish.

In addition, you refer to tank farms in North York, specifically. The application of the Assessment Act and the case law made those legitimate farms.

Mr. Breaugh: That is precisely what angers me about this process. We are supposed to have a process here whereby when the system does not work, there is a way to pick it up. When we have

written a set of laws and regulations and we have had appeals and we have done all of this, if we are still fouling up after all of that, somewhere there is a method of rectifying it. We are at a situation now where major oil companies, according to the eyes of the law--and what angers me more is that it has been upheld in the eyes of the law--are pretending to have farms in North York.

The rest of the world looks at that and says, "That is not a farm." Any idiot walking by looks at it and says, "There is no farming going on in there." In the middle of a major city, what we have is a major oil company storing oil products. That is not a farm by anybody's definition in the world, but we ran this through the whole system and it stood up.

Am I at a point here where, because a major oil company obviously has the financial and legal resources to run at our system and to play with the system, it makes the system work for it? The little family in Newcastle obviously is not going to go to the Supreme Court of Canada with its appeal. They lose. It seems to me we have a system here that needs some rather dramatic revision.

Mr. Bowlby: The tank farms in North York were settled privately by the oil company and the municipality.

Mr. Breaugh: Yes.

Mr. Bowlby: They should have been settled by an amendment to the legislation.

Mr. Breaugh: Probably.

Mr. Bowlby: That is the slow process. We cannot generate it directly. The result of our decisions, the Ontario Municipal Board decisions or other decisions from the courts have to show the way.

Mr. Breaugh: Let me just take one more knock at you now. Then I will leave you alone for a while. The process there bothers me again, first, because of its slowness. What concerns me is not really that it just takes a while to sort it out but that in the process of the slowness we make the problem worse. I want to zero in on what the municipalities are expected to do now. Where do they come up with this money they are supposed to refund to people? Where do they come up with the lost revenue?

It is the design of modern government that is partly at fault here. The municipalities do not control assessment any more; the province does. The province says, "Here are your rolls." The municipality sends out the old tax bills; the taxpayer pays the bills. This is not bad if within the calendar year we can do our assessment appeals and find out what all the decisions are. We have just screwed up, so to speak, for a year.

When we extrapolate this for two, three or four years, we have a system that is absolutely horrendous. I do not think there

is any question about it. There will be municipalities that are sitting down with their lawyers saying: "Wait a minute. What can we do now that will stop us from having to pay out this money? Would I not rather send my legal department to Ottawa or wherever they have to go for a couple of years just to put a stall on us having to raise this additional revenue or pick up the lost revenue we are going to miss next year?"

Surely that system has some major flaws in it as well.

Mr. Hewson: I can tell you that some municipalities are hiring their own professional tax agents and filing complaints by the hundreds and thousands themselves, saying the properties are underassessed and they want them raised.

Mr. Breaugh: Yes.

Mr. Hewson: Windsor is a prime example.

Mr. Breaugh: Instead of solving a problem, the system is simply content to create new problems that are going to take even longer to resolve.

Mr. Hewson: I really cannot comment on why this has had to happen, but obviously it is happening in more than one city.

Mr. Breaugh: Yes.

Mr. Bowlby: There are at least 11 municipalities of stature that have these tax agents, their own assessment agents. It started with Windsor and now they are in Ottawa, Sudbury, Mississauga and Burlington. Many of them, such as Sarnia and London, are on the verge of it. We are in touch with these people to give them advice, guidance and assistance on how to appear as a party before our board.

Mr. Breaugh: I will end with this little tirade. I view that situation as being absolutely the most obscene one I have ever seen any government get into. We have two levels of government that are going to be screwed up for years. We have major amounts of money, and at the end of it all the public we are supposed to be serving does not know how much its taxes really will be. They will not know for some time. I do not think they are going to get any money back for a while. It occurred to me the other day that if I were buying a condominium involved in this tax dispute, I would say, "Thanks, but no thanks."

10:50 a.m.

That would leave an individual who owns one of those condominiums with a piece of property of which he does not know the value. He does not know how much is owed against it or how much money he will get back. It will clearly be tied up in some kind of litigation for the foreseeable future and might very well become about the most useless piece of property he ever sank his life savings into since God put up condominiums.

It really is immensely frustrating to look at that situation. I really cannot see a way out of it. I can see it getting worse; I can see it getting more complicated; I can see it going on for a long time; but I do not see how that is ever going to get resolved.

I will let these gentlemen alone for a while.

Mr. Mancini: I have several questions that deal specifically with the matter of how people defend themselves during the appeal process. It is my understanding that the individual home owner's appeal is upheld or his taxes are not increased if that person can prove that the properties in the adjacent area are paying less in tax than his increased taxes would be. I guess that is how the decision is arrived at.

Mr. Hewson: For similar types of property.

Mr. Bowlby: On comparison with similar real property in the vicinity.

Mr. Mancini: As long as it is similar. Right. Is that similarity based on what people are paying at the time, is it based on the sale of a home in recent times or is it based on new structures in the area as compared to old structures? What is that similarity based on? I could see that within one neighbourhood you might have to break down the neighbourhood eight or 10 different times before you were able to find a similarity.

Mr. Bowlby: There are several approaches to seeing where the equity arises. We must go back into the assessment system in Ontario. There are three systems in effect. The closest example is the city of Toronto, which is operating under the Gray manual based on facts and figures of costing in 1940 and adjusted to 1948 for the costing of all properties within the city, with certain exceptions.

The municipalities of Muskoka and Parry Sound are at market value by proclamation. Those market value figures have been updated twice to my knowledge. The first proclamation at market value was in 1974 and the second was in 1978-79.

With those two extremes, each taxpayer in Muskoka would know the relative value of his property compared with that of the neighbours in a similar house, a similar district, a similar municipality within the municipality of Muskoka or the district of Parry Sound. That is the easiest way of achieving an overview of the equity within this particular assessment.

Then you come to the city of Toronto, where properties are costed on a manual that is nearly 40 years out of date. Take residential property, which is the common example. You get into hotels, apartments and commercial buildings in Toronto. They are basically assessed on an income basis, not on a costing basis. Costing is used as a check.

I cannot speak specifically to the method of the assessment branch, but this is the overview we get from our position in

sitting on these hearings. It is very difficult in a municipality where you are trying to appreciate what it cost in 1940 or 1948 to build that particular house. We all know horrible examples of what inflation has done to housing in Toronto.

Windsor is on a manual of about 1950 and London is on market value.

Mr. Mancini: Excuse me, but some of the municipalities surrounding Windsor are on market value.

Mr. Bowlby: Yes.

Mr. Mancini: A good number of Essex county municipalities made that error. They took the government at its word and went ahead with market value assessment.

Mr. Bowlby: There is the in-between situation where a market value requested by bylaw of the municipality applies section 63, where the market value is taken of all properties within the several classes designated by the regulation and the assessment of the particular property bears a relationship to the whole of the assessment of the municipality in proportion to that class of property.

For example, the region of Durham is being reassessed for this year's taxation under section 63 for the second time. In the 1975 base year, the residential proportion was 5.75 per cent of the whole of the assessment of the township of Uxbridge in particular. I am speaking from personal knowledge on this. The 1980 base year, as requested by the township, has reduced that residential factor to 5 per cent.

So, basically, the assessments stay the same in proportion. But again there is difficulty; a weakness within section 63 to be equitable, because people sometimes look beyond the particular class. Within the residential class it should be the same.

Mr. Mancini: I would like to go back for just a moment. When a new home is constructed I am told there are 10 or 11 factors used before the home is actually assessed.

Mr. Bowlby: There are many factors.

Mr. Mancini: I was told there were 10 or 11 factors.

Mr. Hewson: Are you talking about the city of Windsor?

Mr. Mancini: No, the city of Windsor would not do the assessment, the province of Ontario would do the assessment.

Mr. Hewson: Yes, but in the city of Windsor there are several local factors that apparently apply that do not apply in other places. This is one of the difficulties. It is under what is called the Coombs manual, the values, I think, of 1950. It is the only municipality in Ontario that operates this way.

Mr. Mancini: I was speaking more specifically of Essex county, sir.

Mr. Hewson: Is Essex county itself outside of Windsor? I do not know how many municipalities have been reassessed under section 63. I think most of them are still at the old values, as they were in 1969 when the rolls were frozen.

All the rolls have been frozen unless they have been printed market value by proclamation or there has been a reassessment under section 63. They are frozen at whatever level they were in 1969.

Mr. Mancini: I understand the confusion that might cause but the bottom line to the home owner is that he will pay \$800 a year, or \$1,200 a year, or \$1,800 a year. There has to be some common base within the municipality for that to be done, whether it is 1969, 1973 or 1978. As long as the base is common then there is some sense of fairness.

I want to be specific about the provincial Assessment Act. I am told when they go into a new home, for example, they look to see if there is brick on the outside, if it is one or two storeys or if it has a finished basement. I am told there are approximately 11 different factors they look at.

That leads me to my question about appeals, and how people can make a proper defence. We have had several new subdivisions sprout up all over the county. When a person builds a new home and gets a tax bill \$600 more than his neighbour, there either has been an error or they are not aware of these factors being used. Someone's house might have marble on the floor rather than vinyl, or someone's house might have a brick exterior rather than some type of aluminum.

I do not think enough of this information is being made available to ordinary householders to be able to make a proper defence of their own case.

Mr. Hewson: They can go to the assessment office and get that information.

Mr. Mancini: That is not quite true, sir, because I have had correspondence with the Ministry of Revenue. It was only after making a lot of demands that people were actually told: "An assessor comes to your office and tells you what is being assessed. If you do not like it, you can go to the assessment office." In my view, notwithstanding the windshielding that Mike talked about, I do not think the whole system is open enough. This is another problem that is being dumped.

11 a.m.

Mr. Hewson: It is supposed to be open. If anybody came before me and said he was refused this information from the assessor I would order the assessor to give it to him because he is entitled to it. The assessor has no right not to give people this information.

Mr. Mancini: There is one practical problem I am sure all of us realize. When people go in to defend themselves against an assessment hike, they really do not know their neighbourhoods. It is very difficult for them to try to perceive what is inside other people's homes and what kind of work has been done. Some people are very handy, they are good carpenters, or this or that, and they can fix up their homes and make them look in terrific shape and end up paying less than another person who has not been able to learn that particular skill, and I think there is a great deal of unfairness out there.

I am not blaming you people because I know you have a difficult time doing this, but I think more pressure should be put on the assessors to try to help educate people when they are approached by people who have these concerns.

The other matter I wanted to raise is a specific matter in my constituency that I raised in the Legislature four or five years ago and it is still unresolved. It has to do with a golf course in Anderdon township and--

Mr. Hewson: Canard Valley?

Mr. Mancini: Yes, Canard Valley. I wish I could take you people through my county because if I gave you a personal tour of Canard Valley and I took you to Gosfield South township and gave you a tour of the Kingsville Golf and Curling Club, you would flip their assessments around. I am not trying to say Kingsville should pay more, but any reasonable person who saw those two situations cannot conclude that the Canard Valley club should be paying more than the Kingsville operation is paying.

The property value is the same. I know realtors in Essex county and I know realtors in Anderdon township. They are similar types of township with a similar type of population. I think the industrial base in Anderdon is much more significant, but to suggest that the Canard Valley is comparable in value and worth to Kingsville is really stretching it.

Mr. Hewson: I presided at that hearing last year.

Mr. Mancini: Oh, did you? I am glad you are here.

Mr. Hewson: I rolled their assessment back to the pre-1969 value.

I am not aware whether the Ministry of Revenue has appealed my decision to the Ontario Municipal Board or not, but I did roll their assessment back. It was inequitable.

Mr. Mancini: I am glad you agree, but they appealed your ruling either to the OMB or to the courts.

Mr. Hewson: It would have to go to the OMB first, and then on a point of law it would go to the courts, but I did roll it back.

Mr. Mancini: When did you hear the case?

Mr. Hewson: I think it was last June or July, some time in the summer.

Mr. G. I. Miller: May I ask a supplementary?

Mr. Mancini: I do not know if I should allow any supplementaries, but since it is for you, Gord, go ahead.

Mr. G. I. Miller: You mentioned the fact that in assessing hotels the income came into consideration. Is that a consideration when you are looking at golf course operations, too? We had a concern in our area of Haldimand-Norfolk because the golf course at Port Rowan was almost unable to operate because of the high cost of taxes, the valuation they put on his property, and the fact they were not making the income out of the property. They were having a very difficult time in staying alive. When you mentioned the income of hotels, I wondered if the assessment is based on income.

Mr. Hewson: With golf courses, the assessment is usually based on the value of the land and then the value of the buildings, and the land is usually assessed at a fairly low rate because of what it is being used for. We get very few complaints about the assessment of golf courses because under the act golf courses are permitted to make a special arrangement with the municipality and pay a lower tax rate, which they have to refund if they sell the property to a developer in later years, but they can get a fixed assessment under the Assessment Act.

Mr. G. I. Miller: If they go the local municipality?

Mr. Hewson: Yes, sir. They can get an agreement for a fixed assessment, and that remains in force just as long as they use it for a golf course. For instance, I think all of the golf courses around Metro are on a fixed assessment or they would be bankrupt with the value of the land they are on.

Mr. G. I. Miller: I think that is a similar case to what the owner indicated to me. I do not know if he was aware of that or not, but I certainly will pass that along to him. Thank you.

Mr. Hewson: I will get you the section. It is in here somewhere.

Mr. Bowlby: Mr. Chairman, I want to go back to add to my answer to Mr. Mancini on the residential taxpayer's opportunity for comparisons. These figures have just been given to me this morning. Under section 63 of the assessment program, 449 municipalities have taken advantage of that bylaw at the request of the municipality and 143 municipalities have been at full market value by proclamation, for a total of 592 municipalities.

Of the section 63 municipalities, 22 are being repeated this year, updating the assessment from a base year of 1975, for example, as I mentioned in Uxbridge, to 1980 market value. Those are factored, of course, but a taxpayer, particularly a

residential taxpayer, would know if his house were assessed at \$80,000 or \$90,000, whether it is a factored assessment under section 63 or whether it is a market value assessment under section 70 of the Assessment Act. He would know a similar house in a similar location in a similar subdivision. He would know within a few dollars the comparisons with his neighbours, whether or not he has been in the house. There is always a fluctuation of finishing and appliances and so on that come from a real estate appraiser.

There are 838 municipalities in Ontario, and nearly three quarters have been dealt with in this fashion. That is where we are able to help the taxpayer in those municipalities on comparisons. They are not always obvious to him, but we can assist him in that direction.

Mr. Hewson: Section 22 deals with agreement for fixed assessment for golf courses, Mr. Miller. The owner of the golf course and the municipality can negotiate an agreement.

Mr. Chairman: May I take a supplementary on that?

Mr. Mancini: I would like to finish.

Mr. Chairman: I am sorry.

Mr. Mancini: Do you gentlemen know a Mr. Frank Peters?

Mr. Bowlby: I do not know the name.

Mr. Hewson: No.

Mr. Mancini: I may have to send you a letter. I was at the Essex County Associated Growers' annual convention this past January and he raised some questions from the floor. He has been making appeals regularly for several years. I have some details, but I am not exactly sure what the position--

Mr. Hewson: Where is he from?

Mr. Mancini: I think it is Colchester South township. I thought you might be familiar with him since he has been going to the assessment board for some time.

Mr. Bowlby: I have had hearings in Colchester South. I have not seen the name yet.

Mr. Breaugh: With 162,000 appeals it is hard to know everybody.

Mr. Mancini: Once again the member for Oshawa (Mr. Breaugh) speaks before I am finished.

Mr. Peters has become slightly notorious. He has been visiting the Soviet Embassy and complaining about his assessment for taxes. I thought something of that nature would come to your attention.

Mr. Hewson: Is he complaining about a community centre?

Mr. Mancini: He is complaining about his farm.

Mr. Villeneuve: Does he take his tax rebates?

Mr. Mancini: It was such a special case that was raised from the floor at the meeting I thought something of this nature would automatically be known to you, because you were so familiar with the golf course situation.

Mr. Hewson: We have a gentleman in southwestern Ontario who is very unhappy with Revenue. He is threatening to sit outside the front of the Legislature. I do not know if he has arrived yet.

11:10 a.m.

Mr. Mancini: I have a couple of questions on some of the opportunities for property owners in their appeals, particularly in the rural community where lots are sometimes severed and new homes are built.

I continually get complaints from people in those areas that their homes are assessed--these are new homes I am talking about--at least at what people in the city are paying for new homes or more. However, they do not receive some of the services such as street lights, sidewalks and in some cases paved roads. Police protection and fire protection would probably be the same, but sewers and things of that nature, such as water lines or gas lines, are not available.

I wonder whether you take that into consideration.

Mr. Hewson: There is no direct relationship. The assessor sets the assessment and, based on that assessment, the municipal council sets its mill rate and collects its taxes. We have no control over the mill rate a municipality sets.

We have a lot of complaints, especially in cottage areas, where some cottagers pay more in taxes than they do for their houses in the city and they get absolutely no services. That is because the council has set a certain mill rate and that is all there is to it.

Mr. Mancini: These services are not included as part of your decision--

Mr. Hewson: No, they are not.

Mr. Mancini: --because they are outside your scope.

Mr. Hewson: Their quarrel is with the local council. If their roads are not being ploughed or something is not being done, that is between them and the municipal council. We have no jurisdiction over that whatsoever.

Mr. Chairman: If I could follow up on the subject of golf courses, there are at least three kinds, privately-owned,

municipally-owned and share-owned golf courses. Is a different assessment put on golf land, excluding buildings, depending on the three different kinds of ownership?

Mr. Hewson: If it is municipally-owned, it is exempt.

Mr. Chairman: That is fine; what if it is share-owned?

Mr. Hewson: I have not heard of any difference as to whether it is share-owned or not, because the value of the land is what governs it and it is equated to whatever the lowest rate is for vacant land in the municipality or its vicinity.

Mr. Chairman: You are saying there should not be a difference. An acre of land should not be any different, depending on the ownership thereof.

Mr. Hewson: That is right. It is not the owner; it is the use of the land.

Mr. Charlton: I have a number of questions I would like to ask or a number of issues I would like to deal with. As someone who has dealt with members of your board from both sides, as an assessor and as a representative of appellants, there are a number of things that bother me, not about the way the board is intended to operate but about individual board members.

There are some members of your board who are excellent, who understand the act completely and who understand market value very well. There are also some members who either do not understand the act and do not understand market value or who refuse to apply what they understand.

I have no effective way of knowing how that breaks out with regard to the whole group. In other words, I do not know whether you have 10 per cent, 35 per cent or 65 per cent good or bad chairmen.

Mr. Bowlby: Perhaps I can answer that for a start. There are 71 members on the published list. One of the members died last summer and five are inactive for many reasons. We are dealing with 65 members we count on to go out and preside at a hearing. Of those, four are accountants, two are engineers, 20 are laymen, 32 are real estate appraisers and seven are lawyers.

Seven of our members are bilingual. We can provide bilingual court clerks as required, but we have seven bilingual members to draw upon.

They are all part-time members, and we have no control or discipline over them such as the Chief Justice of the High Court would have over trial judges.

Mr. Charlton: I understand that.

Mr. Bowlby: This is of great concern to us.

To continue, we have some 20 to 22 members, depending on who

is taking leave of absence, who can be counted upon to handle practically any situation that might arise. Of the remainder, many are involved in their own private enterprises and are not always available. Basically, we rely on them for the routine matters in which we do not expect any problems or difficulties.

Our registrars advise us of the scheduling and nature of the complaints that have been filed. Assessing that, we assign members who we think will be able to carry out the hearing most satisfactorily.

In addition to that, Mr. Hewson and I travel the province. Apart from our administrative duties in Toronto, we are out in the field as much as possible. The last tally was approximately 60 days each away from Toronto at hearings. Recently, Mr. T. G. Murphy, the provincial registrar, has been made a member and vice-chairman with specific authority to accommodate the fact that Mr. Hewson and I are away as much as we are. We have to be out in the field to see what is going on. You have three of the most able members of the board here today.

Mr. Hennessy: Hear, hear. Stand up and take a bow.

Mr. Bowlby: The only comment I can add to that is we are dealing with 65 individuals. They are all self-made businessmen, basically. What is the old expression? You can lead a horse to water, but you cannot make it drink. We attempt to tell them to be fair, reasonable, and explain their decisions; but as I say, they are only human.

Mr. Charlton: If I could continue my discussion, I intended to throw out some examples of the kinds of problems I see in the hearing process. You are probably aware of some of them, others you may not be. Obviously, I have not talked to the three of you before, but they are the kinds of things that should be watched with regard to your staying on top of what is happening out there.

I will start with the discussion in which Mr. Breaugh and Mr. Cureatz were involved earlier, which involved the perception which persists about whether individual appellants got their day in court and had a fair hearing. From all I have seen in the hearing process, my judgement is that when you get a chairman who fully understands the act and market value, for the most part appellants get a fair hearing. I have seen chairmen who go out of their way to help appellants say what it is they are trying to say in the proper fashion.

A problem arises when you get a chairman who either does not understand market value or for some unknown reason is refusing to apply it, especially in a section 63 situation. We talked about the first year of that section as being the problem: you have a group of properties, a large number of appellants, all with the same complaint, a bad chairman, and you very quickly develop the sense there was no day in court and no fairness in that community.

11:20 a.m.

I can give you some examples of what I have seen happening.

We had a situation in Stoney Creek the year it went to market value under section 63--Satellite City, specifically. There were a number of properties around the area lying outside the existing Satellite City, but all were within the area that was planned as parts of phases 3 and 4, I believe. They were Veterans Land Administration lots. Most of them were two-acre lots, although a couple were even larger than that.

At any rate, in the early 1970s--1973 and 1974--when the plans for Satellite City were being developed, at that stage the province itself and the municipality were making rather grandiose and ultimately unattainable plans for Satellite City. They were predicting in 1975, for example, that by 1985 Satellite City would be a city of 100,000 people. It is 1985 now and Satellite City has almost reached 10,000 people; it will likely reach about 20,000 by the year 2020, and probably in our lifetime we will never see even the shadow of 100,000.

That kind of talk on the part of both the provincial Ministry of Housing and the local municipality created a lot of speculation in the 1973-to-1975 era. In 1979 or 1980--I cannot recall exactly which year it was--when they went to section 63, all of those sales from late 1974, 1975 and early 1976 were the very sales that were taken into account in that section 63 program.

By 1979 or 1980, when the market value assessments were being done, the whole situation had basically reversed itself. The overall market had dropped somewhat, but the bottom had altogether fallen out of the market for those kinds of properties that were being speculated in. There was a problem in the assessment office, obviously, because they were not capable of picking up on that and taking account of it.

The problem I found in the assessment hearing before your board was that the chairman in question did not fully understand market value and the facts that were being put before him. It is the kind of situation that has happened hundreds of times. Although I think it probably happened less often in 1984-85 than it did in past years, it still happens from time to time.

What happened in that appeal was that we had the typical old sawoff.

I will step back for just a moment. One of the things that happens when a section 63 is being done--I am not sure how much you understand this--is that when you have a whole municipality being changed in one year, what happens in the assessment office is completely different from what happens with an assessor under the normal circumstances of ongoing operation. The instructions that assessors are given in a section 63 situation are, "Once we have returned the roll, you defend those assessments." They know that if you change this one it is going to change a whole category and it is going to affect the municipality. The assessors are told to defend it regardless.

That was the situation in which we found ourselves in that hearing on the Satellite City properties. The assessors were defending without any give at all. We put a fairly good case before the board.

Obviously, the chairman knew enough to understand our case was a good one. We ended up with a decision which split the difference between what the assessor said the property was worth and the amount the appellants claimed. In this case, it was \$100,000 according to the assessors and \$67,000 according to the appellants. We ended up with a decision at \$80,000. It had no relation to market value. It was just a half-way figure that came from somewhere and was a decision which opened up the process to another round of appeals the following year as well as appeals up through the system.

That is one example of the kind of thing that happens. Another example I ran into more recently was a split commercial property on Upper James Street in Hamilton where the property had been built as residential. At some time, a small store had been built at the front of the house. Originally, it was a barber's shop. When the house was built it was in a residential area; that section of Upper James Street is now heavily commercial. So there is a house with a small commercial enterprise at the front in the middle of a commercial area.

In the judgement of the assessors--the weight of the neighbourhood led them to use a commercial factor on that property in a market-value, section 63, situation. In addition to the use of the commercial factor, they also used commercial land values. In using commercial land values it was very clear that in the neighbourhood of Upper James Street every residential property which had been bought by commercial developers had been demolished and something else had been built in its place, including the properties on both sides of the subject property.

It was very clear that if one would go to commercial value on the land, this house would have no value in the marketplace. We ended with an assessment, a market value established on that property, that included full commercial value on the land and a value on the building which had no commercial value but, from the assessment department's perspective, the building had to be assessed.

That is the line they use in spite of the fact that what they are adding for the building is in addition to the full market value of the property and, on top of that, using the commercial factor, to factor that market value down to an assessment roll figure.

That appeal proceeded in three successive years. I got involved in the second year of the appeal process. In the first year, it had gone to your board. The decision was unsatisfactory and had been appealed to the, at that time, county court. I got involved in the board appeal in the second year. That situation was not resolved until the third round when the first-year appeal was going to the Ontario Municipal Board, the second-year appeal

was going to the county court, and we were dealing with the third-round appeal at your board.

11:30 a.m.

The reason I set out the dispute in the example as carefully as I could is--I do not know what the rationale of the chairman in the first round was. I was not at the hearing. I know what he decided. He decided that the property should have a split factor, commercial and residential. I think you are all aware that process is not very acceptable to most of your people, to the assessment division, to the Ministry of Revenue and to the whole concept of market value, but that is what the chairman decided in the first year. I do not know what his rationale was.

At the hearing we had in the second year at your board, the chairman ended the hearing by saying, "You have both presented particularly good arguments and I do not have a clue what the real market value of this property is, but my colleague last year allowed a split factor on this property, so I will allow a split factor this year as well." That was the decision we got. It was obviously a case where the chairman was not at all prepared to deal with the question of market value. He ran away from it. That is a problem that has to be dealt with in the system.

Going back to the question of a fair hearing and an appellant's ability to feel he has had a fair hearing, one of the things I have noticed happening relates to the question of expertise. Mr. Breaugh mentioned it when he said that as soon as an advocate gets involved, the rules change slightly. To some extent that is understandable, but I have noticed what can happen.

As I said, there are a lot of good chairman. When there is a good chairman, nine times out of 10 he will go out of his way to help an appellant make his market value case if he is having difficulty. He may have collected a lot of facts and not know how to present them properly. I have seen a number of chairmen go out of their way to help an individual with his presentation.

On the other-hand, I have seen a lot of chairmen who do not help at all. I have sat in the audience at a number of appeals, where, because I understand market value, I understood what the appellant was saying and I understood he had a case, although I may not have been clear what the exact specifics of the case were. In other words, he had not substantially proved what the market value should have been because he did not know how to go about doing that.

It was clear from what he had presented that there was a problem in the assessment on his property, but because he did not have the proper expertise and all the jargon that goes along with market value in which to present his case, he got passed over and the assessment was upheld.

I do not know what authority one of your board members has to adjourn a hearing at that point and to say, "There obviously is a problem here and I want this problem dealt with in the context

of these facts that have been presented." I do not know what authority there is for your board members to do that, but I have seen a number of cases where, because of improper presentation, a case where there was obviously a problem with the assessment was passed over and the assessment was upheld.

You also mentioned, and I go back to what I mentioned a few minutes ago, that in a section 63 situation, the first year is the problem year. The second year things settle down substantially. That is largely true, but I think we have to look at why it is largely true.

In most municipalities there are a huge number of appeals in the first year of a section 63. Some municipalities are very rural in nature and have very little in the way of exceptions to the rule, so to speak, in regard to the types of property that exist, so there are very few problems. Going back to what I said earlier about the instructions that are given to assessors, when a section 63 is being implemented and the instruction to the assessor is to defend, large numbers of people appeal in the first year, with similar types of residential appeals, farm appeals or whatever they happen to be, who have not sought the expertise of consultants, appraisers, lawyers, advocates or ex-assessors and they lose.

At least 99 per cent of them do not come back the next year. There is the odd stubborn one, such as I had on Upper James, who will keep appealing until the cows come home, but the vast majority who appeal in the first year either win, and therefore do not appeal the next year, or they get clobbered and do not appeal again the next year either.

I think the fact that the second year settles down dramatically does not mean all the problems have been resolved. It is because of the instruction given to the assessors. I know for a fact that has happened in a number of cases.

I know of one case in Hess Village in Hamilton where there were extensive appeals in the year section 63 was implemented. They all lost their appeals because they went individually and did not seek expertise. They were stuck with those assessments for some four years until some real estate appraiser latched on to them and actively solicited appeals for the following year.

It went back before your board that following year with the expertise, and reductions were won in about three quarters of the cases in Hess Village. However, in all those cases the same assessments had been sustained in a previous hearing before one of your board members. That is one of the major lacks I see in the system and it is one of the things we have to find a way to deal with.

Mr. Hewson: There is a problem when an individual comes before us and says he is overassessed, if, when we ask why, he says, "I just know it." What are we supposed to do if he has nothing to back it up?

Mr. Charlton: In a case like that, there is not much a chairman can do.

Mr. Hewson: A lot of them are that way.

Mr. Charlton: I have seen lots like that and it is difficult to say much about the ultimate decision made in that kind of case. If I had an opportunity to sit down with such an appellant and tell him what it is he has to look for and what it is he has to prove, then given that some day he has another shot at it, he might be more successful.

I am talking about a case where an appellant has done some things right but not all things right in terms of the kind of information he or she has collected. He has gone out and found homes comparable to his own, but he makes the mistake at a hearing of talking continually about taxes instead of about assessment. Because both homes were in the same municipality and were in fairly close proximity in terms of neighbourhood vicinity, the chairman should have twigged that there was a serious question as to why there was a rather large discrepancy between the home and those that were comparable. They made that error because they kept talking about taxes instead of assessment. They did not know the right jargon or the right way to present the case and got passed over.

As I said, when somebody goes to an assessment review hearing and says, "I think my house is overassessed because my taxes are too high," and that is the extent of the case, the chairman has little option but to listen to all the facts presented by the assessor and, ultimately, to uphold the assessment.

11:40 a.m.

However, I have seen a lot of cases where people have presented part of the case, not enough to conclude absolutely what the market value should be, but enough to raise serious doubts about the accuracy of the assessments and yet they have been passed over.

As I say, there are some chairmen who, when they get an appellant who presents some of the facts correctly and then gets off track, will go out of his way to try to draw him back and start asking questions to draw out the rest of it. There are too many cases where that does not happen and where a discrepancy has been pointed out that should have been followed up further and is not.

Mr. Hewson: All I can say is verbally and in writing, they have been advised or requested to follow that policy when they are dealing with the ordinary ratepayer and to go out of their way to assist him. That is all I can say.

Mr. Charlton: Some of them do an excellent job at it.

Mr. Hewson: Yes, because we are the first tribunal people come before, and we are the only assessment tribunal for the vast majority and they never go any further.

Mr. Charlton: That is right.

Mr. Bowlby: Mr. Charlton, the members are advised and encouraged that if they run into a situation at a hearing that strikes them as off base, whether or not the taxpayer has any knowledge of what the assessment branch is up to, to adjourn for further consultation with the assessor, or to adjourn to a fresh hearing at a later time. He has that power to interrupt and some do it--not many--but it is done from time to time.

I would add, it is a rarity that either myself or Mr. Hewson, or Mr. Murphy on occasion, will cancel a decision made by a member because it is obviously against natural justice. If he has made a jurisdictional error, we schedule a fresh hearing. We do that, not very often, but it happens occasionally.

Mr. Hewson: We are bound by the rules of natural justice, as well as by the statutes. Because of this, if we feel we have enough evidence in writing that the member obviously denied the complainant what we consider his natural rights or natural justice or a fair hearing, we will just scrub that hearing and reschedule it before another member.

Mr. Bowlby: We ask our members not to admit they do not know anything.

Mr. Hewson: Yes.

Mr. Breaugh: Are you trying to make them into politicians?

Mr. Bowlby: No. I would not go that far. We have to be very careful on this and this is the thrust of our seminars. Every time they come to the office or raise questions, we review these natural justice principles with them. Every member gets a complaint sooner or later and they have to be assisted in this area.

Mr. Hewson: In spite of all the rules and regulations enacted, it all boils down to the fact that the ratepayer is entitled to a fair hearing. That is what it boils down to. If he gets a fair hearing, then natural justice has been done.

Mr. Charlton: What I was trying to point out in my comments is that the system per se is fine, as long as the chairman and the member understand the legislation and the market value process. There are still a number of chairman who, in my opinion, do not understand that, and that precludes a fair hearing.

In a case where an appellant has properly put his case together but has no credentials as an appraiser or whatever, in a situation such as that, if the chairman does not understand market

value, he gives more weight to the so-called expertise in the assessment office, in spite of the fact that the assessor may be under instructions to defend at all costs, whether he is right, wrong, or indifferent.

Mr. Bowlby: We have reduced the number of our members from 96 eight years ago to the 70 of today with that in mind.

Mr. Hewson: We started off with 440 in 1970. That was horrendous because the average member did not even sit a week, so he hardly could have developed any expertise.

Mr. Charlton: There was a report that I believe came out of the Ministry of the Attorney General a number of years ago about changes in the board's structure, appointment process, qualifications and expertise. I cannot recall off the top of my head what the name of that report was, but it has been discussed a number of times here in the Legislature.

Mr. Hewson: As to whether we should have full-time members, as the Ontario Municipal Board does?

Mr. Charlton: Right. Full-time members with a job description, a set of qualifications and so on.

Mr. Hewson: Yes.

Mr. Charlton: Are there any rumblings at all about that?

Mr. Hewson: I do not know where those reports are. Nothing is ordered and nothing--

Mr. Charlton: No. As I say, we have had discussions of that in the Legislature on a couple of occasions during the last five or six years.

Mr. Bowlby: I have seen none of that in my eight years.

Mr. Charlton: The report is more than eight years old, but the discussions of it are not, necessarily.

Mr. Bowlby: I have seen nothing of that.

Mr. Hewson: I think one of the difficulties is that our members live all over Ontario. The Ontario Municipal Board functions out of Toronto. To a point, full-time members who live all over the province would not necessarily sit all the time. Why pay them a full-time salary when they are not really being utilized on a full-time basis? This is a difficulty.

Mr. Villeneuve: Gentlemen, I appreciate that you are dealing with a very difficult science. We are dealing in grey areas all the time. Market value and value per se, like beauty, I guess, are always in the eye of the beholder.

What intrigues me is that you were mentioning a while ago that you use the income approach on certain city properties. Would that be the income approach under existing use or under so-called highest and best use? Under what particular criteria would you use the income approach to arrive at value?

Mr. Bowlby: Present use.

Mr. Villeneuve: Therefore, if for whatever reason a couple of bad years had occurred and the property was not being used for its highest and best use, it could have a negative value. Is that possible?

Mr. Bowlby: It could have a bearing on the value. Yes.

Mr. Villeneuve: Therefore, highest and best use in the assessment process as you perceive it is not adhered to at that particular time.

Mr. Bowlby: That is the concept of the zoning bylaws under the Planning Act, not under the Assessment Act.

Mr. Villeneuve: Market value, in my humble opinion, is probably the way all assessment should go because it is the only real and true yardstick by which people who purchase properties arrive at it. But again, as we go out into the countryside, market value is being established right now by many distress sales, forced sales. Many would argue it is not a true market value, but if indeed property is changing hands at those dollar figures, then it has to have a great deal of bearing on market value.

As we go back to the 1978 base year for those municipalities in my area that are on market value assessment, many of the appeals that are heard tend to reduce value based on the situation today. Can you comment on that? I find that very difficult for the municipalities that have to live within that realm.

Mr. Hewson: It is difficult for everybody. You mention a 1978 base. It is difficult for people to understand that everything is factored back to whatever value is arrived at for 1978, regardless of what the position is in 1985. But if this is the way all the properties are assessed in the municipality--and the courts have said it really does not matter how you assess them in a municipality as long as all similar properties are assessed in the same manner--it is equitable. This is what we are faced with. If they are all done in the same way and if they are equitable, then there is nothing that can be done to change them and it does not really matter what base year is used.

11:50 a.m.

We look at Toronto in 1940. It does not really matter as we could go back to 1822. It is whether all similar properties in that area are being assessed in the same manner; that is really the bottom line.

Mr. Villeneuve: I guess you would have to agree that as you get away from that famous base year it is always more difficult to have the appellant perceive he is getting a fair deal because of the remoteness of the situation.

Mr. Hewson: Because of the fluctuating market.

Mr. Villeneuve: That is right. I can appreciate how difficult it is for those people who chair some of these meetings. As you say, you compel them or try to insist that they not admit to knowing nothing.

It goes back to a situation that you have to live by the act and you also have to make the appellant accept the fact he is being looked at in fairness and in the same fashion as everyone else. I can see problems with certain out-of-the-way properties but not run-of-the-mill situations. We had a problem situation in the city of Cornwall where Domtar had a tremendous reduction in assessment to the point where it really upset the cash flow of the city for several years.

These are difficult situations to deal with and I can sympathize. I think we could probably go to the three financial institutions that had appraisers put different values on different properties over a period of time. Some people call it kiting. It was supposedly professional people doing the assessment or appraisal work. They came up with values and they were accepted as lending values. We all know it was not quite the way it was, but those are so-called professionals.

So you are dealing in a grey area at best. I think you are doing a pretty good job under many sets of rules and conditions across the province.

Mr. Hewson: You mention the city of Cornwall. We did lower the assessments last year on some of the older business areas of Cornwall because of economic conditions that altered the values.

Mr. Villeneuve: We had a fluctuating downward trend. We factored back to 1978, when things were economically better than in 1983 and 1984. It did create some havoc with the income of the municipality.

Mr. Hewson: That is right. It was established as far as our board was concerned that while it created havoc--that is the word you could use--in some of the downtown areas, we did reduce them.

Mr. Villeneuve: Thank you.

Mr. Hewson: I think Dufferin was another instance. Domtar was another problem mentioned. I believe Domtar was settled by minutes of settlement to which the municipality was a party.

Mr. Villeneuve: Yes, they were.

Mr. Hewson: Often we have been accused of making horrible reductions to large industries in the municipalities, but really what has happened is that all the parties, including the municipality, have come to us and said, "We have reached an agreement." So we really did not reduce anything because everybody agreed to it.

Mr. Villeneuve: As I am sure you are aware, Domtar is the biggest employer in that city so it is treated with kid gloves as much as possible.

Mr. Hewson: Oh, yes.

Mr. Charlton: On that, perhaps I can clear up a couple of things you raised. You have touched on part of it. The assessments on most large industries, unfortunately, are not in any kind of a factual or provable way, based on market value, simply because most large industries do not sell as houses do or even as small commercial properties do. For the most part, those assessments are negotiated in the first instance and then in appeal, negotiated again.

The other thing you raised was about highest and best use. The comments you got that for the most part it is current use, is correct. In the assessment process the assessor approaches the whole question of highest and best use in terms of predominance. When you have a property such as the one I described earlier on Upper James Street where the whole street, with the exception of a handful of properties, has changed from residential to commercial, the street is considered commercial.

In the case of a property such as this, they tacked a small commercial enterprise on the front of the house although the use is still predominantly residential. The judgement was made to go to highest and best use, which was commercial value. You do get to a stage where they stop looking at current use and start looking at predominant value in the community.

Mr. Hennessy: I have one question. A while back I interceded on behalf of a group of residents in the Waverley Park Towers in Thunder Bay. They felt they were unjustly assessed in regard to their condominiums, which went up a little high. They seemed to object very strongly. I have written to you people.

I wonder if you would be kind enough to look into it again and get back a letter to me at my office so I can at least notify them I received correspondence from you. I would like to know if there are any steps they could take in that regard. There are not many condominiums in Thunder Bay. There may be three at the most. They were assessed quite highly and objected. I wrote to you people and got an answer back, but I forget when. Since you are here I would like you to look into the matter. I will leave you my card and perhaps you could drop me a line.

Mr. Hewson: Certainly. I would be glad to.

Mr. Hennessy: I do not have a card here. It is room 317.

Mr. Hewson: Because of that recent Supreme Court decision, all condominiums in Ontario have been reassessed. I do not know whether in this case it has been down or up.

Mr. Hennessy: They have been put up. If they were down, you would not hear a word.

Mr. Hewson: You are right.

Mr. Hennessy: I wonder if you would be kind enough to look into it, in addition to the question I asked today, and reply to me. Thank you very much.

Mr. Bowlby: I would like to make three comments on the speakers who raised points.

Mr. Villeneuve, on section 63 assessments: when a municipality first requests it be at market value factored by bylaw, or even by proclamation, we have knowledge of this and the matter is scheduled to be heard. We select the best member available who can sit as long as possible in that municipality to give consistency of approach and decision, if possible, on the evidence brought to him. Members have spent six weeks or longer. We had one who sat six months in Sault Ste Marie last year, to get consistency, which is necessary to achieve a sense of fair play, if not necessarily satisfaction.

Mr. Hewson and I have sat in municipalities for several weeks at a time to make sure it is done the same way. We cannot afford to be there all the necessary time.

With regard to Mr. Charlton's question about the ministry's settlement, certainly on larger properties such as industrial, commercial, and so on, the figures are astronomical. We have no problem with that, but members are often presented with minutes of settlement on smaller matters, which are just as important to the residential taxpayer. In those cases we have members who are very careful to examine those minutes before accepting them. In fact, that turns up quite often in the residential and smaller commercial properties. We cannot avoid the adversarial system brought on by the Ministry of Revenue particularly. They would like to select what they want to deal with.

To comment on the condominiums, of the 170,000 units in Ontario, I would assume the whole of the province has been looked at in the light of the recent decision, Appeal Condominium 57. Of those assessments I have seen in Metropolitan Toronto, some have gone up and some have gone down compared with other years. However, they are back on the basis of the Gray manual in Toronto, and costing which can go back to 40 or 45 years is pretty hard to face in today's reality, with the market what it is. They are factored on market value, and you get ratios of assessment to market value throughout these municipalities that are still on the old manuals.

Mr. Chairman: Thank you. We will adjourn until two o'clock. Some members have a few more questions.

The committee recessed at 12 noon.

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STANDING COMMITTEE ON PROCEDURAL AFFAIRS

REVIEW OF AGENCIES, BOARDS AND COMMISSIONS:
ASSESSMENT REVIEW BOARD

TUESDAY, FEBRUARY 19, 1985

Afternoon sitting



STANDING COMMITTEE ON PROCEDURAL AFFAIRS

CHAIRMAN: Treleaven, R. L. (Oxford PC)
VICE-CHAIRMAN: Watson, A. N. (Chatham-Kent PC)
Breagh, M. J. (Oshawa NDP)
Charlton, B. A. (Hamilton Mountain NDP)
Cureatz, S. L., (Durham East PC)
Edighoffer, H. A. (Perth L)
Kells, M. C. (Humber PC)
Mancini, R. (Essex South L)
McNeil, R. K. (Elgin PC)
Miller, G. I. (Haldimand-Norfolk L)
Rotenberg, D. (Wilson Heights PC)
Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Substitutions:

Hennessy, M. (Fort William PC) for Hon. Mr. Kells
Pollock, J. (Hastings-Peterborough PC) for Hon. Mr. Rotenberg

Clerk: Forsyth, S.

Assistant Clerk: Decker, T.

Staff:

Eichmanis, J., Research Officer, Legislative Research Service

From the Assessment Review Board:

Bowlby, B. H. B., Chairman
Hewson, G. C., Vice-Chairman
Murphy, T. G., Provincial Registrar

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON PROCEDURAL AFFAIRS

Tuesday, February 19, 1985

The committee resumed at 2:10 p.m. in room 228.

AGENCIES, BOARDS AND COMMISSIONS
(continued)

ASSESSMENT REVIEW BOARD

Mr. Chairman: We will begin.

Mr. G. I. Miller: Mr. Chairman, for clarification, are farming woodlots automatically taken off the assessment or does one have to request it?

Mr. Hewson: Mr. Chairman, it should be automatic. We have never had occasion to deal with them, as I recall.

Mr. G. I. Miller: You have never had occasion as far as the review committee is concerned.

Mr. Hewson: I never have personally.

Mr. G. I. Miller: You have never had anyone come before you with regard to the assessment of 50-acre individual woodlots.

Mr. Hewson: We have had lots of complaints from people who had tree farms who said they were farming; those are not considered farms.

Mr. G. I. Miller: Are tree farms not considered farms?

Mr. Hewson: The courts have said they are not farms. That is all I can recall regarding woodlots or trees.

Mr. Bowlby: Mr. Chairman, any I have run across have automatically been allowed for in the assessment according to the provision of percentage in the section of the act.

Mr. Villeneuve: I do not believe the farmer or the land owner is aware of that until he appeals.

Mr. Bowlby: He may not be.

Mr. Villeneuve: That is the problem.

Mr. G. I. Miller: I wondered if you had to deal with it.

I suppose wetlands could be another issue as far as assessment is concerned. Have you had any experience with that?

Mr. Hewson: Do you mean floodlands, flood plains?

Mr. G. I. Miller: I mean wetlands or floodlands or marsh lands.

Mr. Hewson: They get a lower rate because they are not really usable for anything. They are at about the lowest rate you can get.

Mr. Watson: Be careful.

Mr. Hewson: As far as assessment is concerned, they are not farmable.

Mr. Watson: Why are they classified residential and why do they carry a higher assessment than farm land?

Mr. Hewson: It is all classed residential, but it should have the lowest rate.

Mr. Watson: Would you mind looking into that? That is a point I want to get at. I come from Dover township where you can either grow bulrushes or you can drain it, pump it and have farm land. If you leave it in bulrushes, you now pay more taxes than if you farm it, because of the rebate on the land. You do not get a rebate for marsh land. Do you have the authority to change the classification these people have?

Mr. Hewson: If it comes before us.

Mr. Watson: You have not had any marsh land that people wanted to justify as farm land because they were farming it.

Mr. Hewson: I personally do not recall the term "wetland." We have had lots of flood plain land where a conservation authority has said, "It is flood plain land and you cannot build on it." Naturally, it is not worth as much money as land you can build on. However, wetlands, if they are an integral part of a farm, have always been considered part of that farming operation, whether farmed or not.

Mr. Watson: It is a very-dicey subject. I think it is at a level before it gets to you, but within the past year it has become a real problem and I suspect it is going to get to you within the next year if somebody does not back down.

Mr. Hewson: Fine.

Mr. Watson: These people are now paying more. If there is a public purpose in maintaining the wetlands for bird sanctuaries or flyaway sanctuaries or whatever, I think we need some adjustment on it.

In Kent county, in my part of the world, it is a little different because we have a choice. A lot of wetlands are wetlands and they are going to continue to be; you cannot do anything else with them. However, in Kent county we have something like 30,000 acres that would be growing bulrushes if it were not for the pumps. It is just a matter of moving over to the next road and pumping it out and farming it. We are going to have a lot of these wetlands broken up for farming if this taxation issue continues.

Mr. Bowlby: Is the answer to that through flood control?

Mr. Watson: It has nothing to do with floods at all. It has to do with the assessment on wetlands. Floodlands have nothing to do with this. I understand the problems of the low land and flooding, but this is simply land that is naturally below lake level.

Mr. Bowlby: I have had the question of floodlands and I have had the question of wetlands affecting the value of lands within a farm and adjustments have been made from time to time, but with the situation you comment on, Kent county is a submerged county in spots.

Mr. Watson: Yes, it is. Some people are amazed that our land, some of the best land in Canada, is below lake level. That is why it is so good, and it has to be pumped.

We had the drainage people here last week, and there were all kinds of schemes for pumping it and so forth, but it is the area where they do not pump where people are now suffering. I understand it is a problem because the assessment people have assessed this land at the residential rate, which in terms of a rural area is the highest rate you could have. Is there no such classification as a marsh land assessment?

Mr. Hewson: Not that I am aware of.

Mr. Watson: It is either a farm or residential?

Mr. Hewson: Yes. The famous marsh lands of the Bradford area, which have been before us and the courts for years, are all classed as farms, all the Bradford marsh.

Mr. Watson: What about the part of the Bradford marsh that was not drained and could be drained? What are you going to do with that?

Mr. Hewson: Again, it depends on whether it is considered an integral part of a farm. If it is, it is automatically part of that farm, whether they are using it or not.

Mr. Watson: With the ones I am talking about some of the farms have several hundred acres, and they may have 100 acres on one side of the road that is pumped and they are farming it, and essentially they pay the same taxes, but they do not get their 60 per cent rebate on the marsh land, and they do on the farm land.

Mr. Hewson: Right. The problem arises--

Mr. Watson: They never used to. The adjustment came when the assessment people apparently changed the assessment on all this marsh land.

Mr. Bowling: It has not come up to our board in that context to my knowledge, and we watch this carefully.

Mr. Hewson: When something new such as this comes along,

the Ministry of Revenue determines the policy, and then when it is challenged it comes before us for consideration as to whether we agree with the Revenue policy or not.

Mr. Watson: Eventually, if Revenue does not change its policy, it is going to work its way up. I have that feeling. What I want to know is what you can do about it. I guess that is not a fair question because I would be asking for a decision before you heard the facts. But what are your options? Can you say you are going to consider this as farm land rather than residential land? Is that a possible decision you could give?

Mr. Hewson: We would have to wait to hear the arguments and hear what people are asking for.

Mr. Watson: But you have the power to change the classification?

Mr. Hewson: We can change the classification and we can change the assessment. Under section 48 of the Assessment Act, we step into the shoes of the assessor when we review the assessment. We have the authority to alter an assessment and we have the authority to change anything he has done.

2:20 p.m.

Mr. Watson: We have not been able to get changes. It seems to me the assessor goes out there and says, "This is not farm land," and the only category left to put it in is residential, which seems to be the residual. I do not know whether that is a fair statement or not, but in a rural township it happens to be the highest assessed land in the township and here you have this fellow who is maintaining 200 or 300 acres of bulrushes who finds himself having it called residential, which is just as wrong. The assessment people say, "It is not farm." I agree it is not farm, but it is certainly more a farm than it is residential. There does not seem to be a classification for it.

Mr. Hewson: Yes, but the policy that is set by any assessment office is merely policy. It is merely a guide; it is not written in stone. We can review the local policy and we determine whether we agree with it or not.

As I say, our policy is not derived from the Assessment Act. It is a policy that is determined by the assessment commissioner, or Oshawa or somebody, and it is a guide for assessors to follow, but they do not have to follow it blindly and they should not. They are supposed to use common sense. We review what they have done and determine whether we agree with it or not.

Mr. G. I. Miller: You were saying that you have the right to change the valuations?

Mr. Hewson: Oh, yes.

Mr. G. I. Miller: And it is through this board.

Mr. Hewson: This board has to certify the roll for every municipality in Ontario. Our regional registrars do that after we have made our decisions and the rolls are altered in accordance with our decisions.

Mr. G. I. Miller: Getting back to our woodlots, are they assessed on the same basis as any other agricultural land?

Mr. Hewson: I really do not know.

Mr. Bowlby: I cannot answer that.

Mr. G. I. Miller: My concern, and the concern that has been expressed to me, is that if you have a 50-acre woodlot, you do not get any return unless you work that woodlot, or if it is in the growing stage, the return on it is not all that great. Consequently, they are selling lots out of many of our woodlots to build houses, and I think they are doing so at a time when it is a disadvantage to all of us in Ontario because we are using those woodlots more and more for alternative heating purposes.

I see a tremendous amount of wood going up and down southern Ontario on a daily basis by the tractor-trailorload and by the truckload. They should be encouraged to reforest and restock them. They are a renewable resource, one that would be exceptionally good for all of us. Maybe some consideration should be given, as far as assessment and taxes are concerned, to encouraging them to leave them in woodlots rather than develop them or overwork them.

You say you have never been approached by anyone, that you have not had many concerns expressed.

Mr. Bowlby: Not to my knowledge.

Mr. Hewson: I am not saying it has not come up, but I personally have never heard of it coming before us.

Mr. G. I. Miller: I would like to leave that with you because I think there is some pressure out there. As I say, maybe you can take a closer look at that for the future. For many years when energy was cheap the woodlots were a forgotten thing; they lay dormant during the 1940s, 1950s and 1960s. But they certainly are not dormant now. They are providing a lot of work, and for future generations I think it is up to us as legislators to protect them so they will continue to supply a need.

Mr. Hewson: I do believe it is spelled out in the Assessment Act concerning woodlots, is it not?

Mr. G. I. Miller: One acre for every 10 acres is tax free.

Mr. Hewson: Yes.

Mr. G. I. Miller: But if you had a 50-acre woodlot and nothing else, would you have five acres that would be tax free or a totally different valuation?

Mr. Charlton: A totally different valuation.

Mr. G. I. Miller: It is expressed to me--and I am not sure what the figures on it are--that it is fairly high on a piece of land from which you cannot get a big return.

Mr. Charlton: Especially if there are any other isolated woodlots in the vicinity that are not part of a farm. Where some building lots have gone in and established some kind of residential land value for the area, then that is ultimately what will happen to woodlots that are on their own as opposed to attached to a farm. Unless a woodlot that is attached to a farm is actually severed for residential purposes, the woodlot is assessed as farm land, and fairly low-class farm land.

Mr. G. I. Miller: To use Haldimand-Norfolk as an example, Norfolk county has been a leader in that field. They know the value of the forest cover because it was cut off and there was nothing but blow sands. It was redeveloped by the St. Williams nursery farm back in 1910-15, during which years it was established and the tree planting program came about.

There are many thousands of acres owned by the former county of Norfolk, now Haldimand-Norfolk. The Long Point Conservation Authority has also bought many thousands of acres to leave permanently in woodlots. There are many private 50-acre lots and 100-acre lots that are totally wooded. The owners are being penalized because of higher taxes. As I say, it is not a big return, not the same return one would get from agricultural use.

Mr. Charlton: Township woodlots are not a problem and conservation authority woodlots are not a problem.

Mr. G. I. Miller: No.

Mr. Charlton: It is privately owned woodlots that can become a problem.

Mr. G. I. Miller: I suppose every farmer has another 10- or 15-acre woodlot on which he could be tax exempt. I am not sure if it is automatic or if you have to apply or appeal. I think you have to appeal to take advantage of that. That is an incentive to leave that, because I believe one of the requirements is that you must have a fence.

Many farmers today are working their farms without fencing, which is really no problem until it is separated is out, as long as it is maintained as a woodlot. There is considerable pressure being applied in Norfolk by the farming community to clear the land and get more working space, level up the low spots and have better working conditions. That pushes the woodlots back further all the time. They are using the fact that they do not have to pay taxes. It is an incentive to leave the woodlot and replant.

Mr. Bowlby: The onus there is on the taxpayer to make his inquiries of the branch or file a complaint and have it brought up before our board. Whatever evidence was produced, or whatever arguments were there, we would have to make a decision on that. I have not had any cases, nor has Mr. Hewson.

Mr. Charlton: On the fencing issue, if my recollection is correct, the fencing of woodlots on farms is not a requirement of the act. That is a local policy of the regional assessment office. It is something the assessor should be able to sort out, especially if it is a crop farm with no livestock. Certainly, if it cannot be sorted out with the assessment office, these gentlemen and their board could sort it out at a hearing. But the assessment office should be able to sort it out.

There are two other issues I would like to raise with you, more out of curiosity than anything else, simply because I was not a part of what happened. The first issue is the urea formaldehyde matter from a couple of years ago. Correct me if I am wrong, but I think the first precedent was set in Sault Ste Marie where the board member who was dealing with that hearing ruled that a home with urea formaldehyde was worth only 30 per cent of its market value without the urea formaldehyde.

Mr. Hewson: I think the reduction was 50 per cent based on the evidence submitted at that hearing.

2:30 p.m.

Mr. Charlton: Okay. It seems to me after that there was a series of hearings in other locations where basically the board member who was hearing the matter just made the same decision of 50 per cent.

Mr. Bowlby: I can speak to that. The first of the hearings was in Sault Ste. Marie and the decision on the evidence used led to a 50 per cent reduction on the building, not on the land. I was present at that hearing in the Soo, but I was not a member of the board sitting at the hearing. Following that, we decided we would limit the number of members who sat on the urea formaldehyde hearings across the province, and basically three members heard practically all of the hearings across the province.

I followed up the hearing at Sault Ste. Marie with hearings in Waterloo region. Of the many which were dealt with there and in the whole of the region, apart from one or two individual cases, the decision I reached was for a 45 per cent reduction on the value of the building. I went from there to the regions of Trenton, Belleville and Kingston and assessed varying percentages in varying municipalities, varying assessment regions, but they were basically around the same, 40 to 50 per cent, in that range.

Mr. Hewson went to Ottawa and the evidence there was overwhelming, to the extent that it led to a 75 per cent reduction in the value. This is based on the evidence they used in the hearings. That 75 per cent was applied from then on across the province where it was warranted by the complaints against urea formaldehyde insulation.

One or two varied from that; they were either a total loss or were not affected at all, but those would be isolated cases. That is the pattern of that development.

Mr. Charlton: Although I was not directly involved in it, I tried to follow this as closely as I could in the press, and so on, and I was reasonably pleased with the approach your board members were taking. I was not aware of the specific individuals who were involved in the hearings, but--

Mr. Bowlby: There were basically three members who heard them.

Mr. Charlton: Yes. Subsequent to that, the assessment division made a policy decision.

Mr. Hewson: Arbitrary.

Mr. Charlton: An arbitrary policy decision, which was to say that in Ontario residential buildings with urea formaldehyde foam insulation could be--not even would be--subject to a 30 per cent reduction on the building across the board, across the province. I was somewhat distressed by that policy decision simply because, as you have suggested in your comments already, that if we are talking about market value, we are talking about different effects in the marketplace in different communities, and what we should be looking at with something like urea formaldehyde, or with anything such as that which causes an effect on market value, is the real impact.

I am curious about the status with respect to how your board members deal with an issue such as urea formaldehyde. The assessment division has set a policy and that is what the assessor is going to come in and push for when somebody appeals because he has urea in his house. The assessor is going to come in and push for that 30 per cent on the building and nothing more. If that appellant comes in with substantial evidence that the effect on the value of his home and property is far greater than 30 per cent of the assessment on the house, are your people still at liberty to reduce it further?

Mr. Hewson: Yes.

Mr. Bowlby: We have done it, as high as 75 per cent.

Mr. Charlton: You are negating the policy where facts warrant it.

Mr. Hewson: When the Minister of Revenue made that announcement, he also said it was up to us to determine at a hearing whether more should be granted in individual cases.

Mr. Bowlby: May I read from our policy statement on that?

Mr. Charlton: Please, do.

Mr. Bowlby: "For the 1983 taxation year, the Minister of Revenue recommended a 35 per cent reduction in the assessment on dwellings where the presence of urea formaldehyde foam insulation was established." That was the starting point for 1983. The varying percentages for 1982 from 45 per cent to 75 per cent led to that policy by the Minister of Revenue last year.

"When considering the complaints of parties requesting a percentage reduction greater than the 35 per cent allowance, the board has had to ascertain in each municipality whether or not there was sufficient evidence presented by a complainant or complainants which would indicate a loss in value in excess of the 35 per cent allowance. Where such evidence has been submitted, the board has increased the reduction in the assessment on the subject dwelling accordingly."

All our members are aware of that. That is our policy, a fair hearing on whatever evidence is brought to us. We go by that.

Mr. Charlton: Can we take this one step further for a moment? In your opinion, what is substantial evidence in a case like that?

Mr. Hewson: Sales.

Mr. Charlton: Sales.

Mr. Hewson: Or lack of sales. If somebody has had his house on the market for two years and cannot sell it--

Mr. Charlton: I raised that because, although I was not personally involved in the appeal hearings, there were several cases reported to me in Hamilton where appellants had their homes listed at particular values, relisted them at reduced values, again relisted them at reduced value, and finally went into a hearing. They had some difficulty getting more than the 35 per cent, even though they went that route and were unable to sell the houses. Have you had any assessment as to how evenly the policy you read out is being applied?

Mr. Hewson: In some municipalities the sales have indicated a ratio lower than 35 per cent. Some have been as low as 10 per cent and 12 per cent.

Mr. Charlton: In terms of a reduction.

Mr. Hewson: Actual sales. There was a lot of hysteria over this. If the stuff was properly applied, it is an excellent insulator. If I may say so, it was the fly-by-night operators who were improperly licensed by Ottawa who caused the whole chaos, not the bona fide operators who put it in properly. A lot of people panicked and some very good sales were made. People bought houses that are properly insulated at bargain prices. There was nothing wrong with the homes at all.

Mr. Charlton: There is no question that happened; that is true.

Mr. Hewson: In all the thousands I heard, there were only three instances where the people had to leave the home and then we reduced it to \$1. They were forced right out of the home. I had only three of them.

Mr. Bowlby: I heard all the UFFI complaints in one city and I found that the reduction in value from sales was about 28 per cent. That was in 1983 when the 35 per cent policy came into effect. The evidence brought to the hearing was less than the policy. That was just one municipality. It is the only one I have knowledge of.

Mr. Charlton: To the best of your knowledge, was there ever any questioning of the assessors with respect to the sales they brought in of homes with urea formaldehyde? Was there any questioning as to whether they were able to determine the buyer's knowledge of the substance at the time of the sale?

Mr. Hewson: Absolutely. That was asked for each sale, whether the buyer had been made aware of the fact there was UFFI in the home. They all had.

Mr. Charlton: They all had.

Mr. Hewson: Yes. They have to disclose it. There has been a recent court case where people were sued successfully for not disclosing it.

Mr. Charlton: I understand that happened during the process, but there were obviously sales being used by assessors that happened before that court case.

2:40 p.m.

Mr. Hewson: Yes, but they had all been asked and all had said they knew it was there. I presume a lot of them were speculators. Who knows? However, they were all aware.

Mr. Bowlby: The figure of 28 per cent came from sales adduced by the Ministry of Revenue to the hearing that I was at. But their policy was 35 per cent.

Mr. Hewson: It is a very complicated subject. There are certain types of homes that urea formaldehyde foam insulation should never have gone into. Stone houses are ruined. They cannot be repaired; it eats the mortar in the stone. In a clapboard house it is very simple, apparently; they just rip the outer clapboard off, take the UFFI out, put new clapboard on and it is as good as new.

Mr. Charlton: I have a few homes in my riding that were very successfully reworked.

The other issue I would like to talk to you about is one that has bothered me for a long time. It bothered me when I was an assessor and it probably bothers me even more now, and that is the issue of the assessment of similar properties in the vicinity versus market value assessment.

There have been a number of cases and it was an issue for a long time, even before we started into market value. It has become even more of an issue with the market value situation, but not on

all occasions, and again there seems to be some variation in how your board members rule on cases such as this.

It is a situation where you have had a section 63. A person has appealed his assessment and comes in with rather substantial evidence that the market value that has been assigned to his property is incorrect. But the assessor is able to provide substantial information that although the assessment may or may not be incorrect, it is relatively equal to that of other similar properties in the vicinity.

There seem to be decisions happening both ways on that issue. One chairman will deal directly with the market value question and will deal with the evidence that the market value is incorrect. Another chairman will take the position that, unfortunately, all these comparable properties are not under appeal and that, in changing the assessment on this one, he would make it inequitable with the rest of the similar properties; therefore, he is not going to reduce the assessment even though the market value may be incorrect.

I assume you are aware of that problem and I am curious about how you are attempting to deal with it and what your view is of how it should be resolved.

Mr. Bowlby: I would answer it this way. You cannot criticize a decision of a superior court unless you have heard the evidence. I would rely on what I heard of the evidence before I could make a decision.

We do have occasion to go over matters with members before their decisions are given. If they are reserved, a policy is to provide a written reason in each case. We are consulted on that from time to time. They have a chance to discuss it.

But without hearing the full evidence, we are a little at sea ourselves. I do not say we rely on the appeal procedures. We try to go over examples with members from time to time in our seminars, as I mentioned earlier, but we cannot answer any specific instance. It is impossible.

Mr. Hewson: Under subsection 65(1) the act says it has to be shown that it is inequitable in relation to similar properties in the vicinity. The Divisional Court again has just said in Regal stationery that it is up to us in every instance to determine what is similar property and what is vicinity. It is not a matter of law, and the courts are going to stay right out of it. It gets back to the evidence submitted at each hearing for each case. It really does.

On the point you brought up about whether it has happened that an assessor has said, "If you lower the assessment on this one, it is putting the others out of whack because the others are unfair and we are going to correct those, the members have been told that is irrelevant. They should not listen to arguments like that. They should not do it. If they determine a property is inequitable, they should alter it.

Mr. Charlton: But it is only inequitable in relation to the market value question. It is not inequitable in relation to other similar properties because there was an error made in the way that market value was determined.

Mr. Hewson: In the capital decision the courts have said it does not matter how they assess it if they are all done the same way--whether it was on the cap rate. The courts said the cap rate is wrong.

Mr. Charlton: It is a contradiction in the act.

Mr. Hewson: But it is wrong for everybody, and therefore it is equitable.

Mr. Charlton: It is a contradiction in the act. In subsection 65(1) you have an "equitable with similar properties in the vicinity," and you have also got the market value thing.

Mr. Hewson: The problem is that subsection 65(1) does not apply in a proclamation area, where it is at market value--

Mr. Charlton: But the proclamation area only covers in those--I forget how many municipalities--that are at full market value. They do not cover the areas which are assessed on market value but assessed at a percentage of it.

Mr. Bowlby: There are 143 at full market value.

Mr. Charlton: Right.

Mr. Hewson: That is the trouble. A lot of our members get tripped up on this. You forget you are in a proclamation area and try to apply subsection 65(1), and it does not apply. You have to look at the market value.

Mr. Charlton: There is no easy resolution to this.

Mr. Hewson: Not really, unless the whole province is under proclamation or reassessed or something.

Mr. Pollock: I have had complaints from people who had bought property hoping to develop it for a cottage subdivision, for example. Then the planning board came along and said they could not develop it. The people bought it at a high price and cannot develop it, but they still have to pay the high tax on it. Have you ever had any situations where people come before you with that kind of comment?

Mr. Hewson: Refusal of a building permit?

Mr. Pollock: No. They cannot develop their property, and naturally they ask why they should have to be paying high tax on this property. They want it lowered.

Mr. Hewson: I do not know about the tax. If it is classed at a higher rate because it is anticipated they can build on it, and they can show they have been refused a building permit, it will be reclassified at a lower rate. We will do that.

Mr. Pollock: There is no problem then.

Mr. Hewson: They have to prove they cannot get a building permit.

Mr. Pollock: But if the planning board has said they cannot get a building permit, it should not be a big deal then.

Mr. Hewson: Usually there is no problem. They may have a letter from the municipal office saying they cannot have a building permit.

Mr. Pollock: Is that all they need?

Mr. Hewson: Yes, to reduce the value. But it may be at the lowest value. This is what I do not know. A lot of vacant land is at the lowest value it can be.

Mr. Pollock: Last year the Minister of Revenue came out with a special deal for handicapped persons who put additions on their houses. That is etched in stone. There is no appeal, say, if the person had done the work ahead of time and got into a serious financial situation and felt he could not pay these high taxes?

Mr. Hewson: We have not had any cases on that yet. It is brand new.

Mr. Bowlby: That amendment was effective last May 16 for 1985 taxation.

Mr. Hewson: It applies to this year.

Mr. Bowlby: None has come up yet. None of the 1985 complaints has been scheduled yet.

Mr. Charlton: If my recollection is correct, the legislation covered only additions or alterations made from that point on.

Mr. Bowlby: Yes, for 1985 taxation.

2:50 p.m.

Mr. Charlton: What is your approach to somebody who made an alteration because he or somebody in his family is handicapped, if the alteration was made in April 1984 before the legislation was passed? He appeals his assessment now and is going after a reduction because he got stuck with an increase. He comes in on the issue of it being equitable with similar real property in the vicinity and he has two or three examples of people who made alterations after May 26.

Mr. Pollock: To go into that further, I had a person who claimed he had a condition and was gradually getting worse but he did not need the ramps for wheelchairs at present. Yet he went ahead and built because he wanted to make other improvements to his cottage. It is a house now, but it was a cottage. He did not need that for another year or so. That was his concern.

Mr. Hewson: I do not know Revenue's policy on this. I have no idea. For many years they did not assess swimming pools. They left them alone. I do not know what they are going to do about this, whether they will check these people out or take their word for it. I was led to believe that all people have to do is sign a simple affidavit and that is the end of it. It could be so. I do not know.

Mr. Breaugh: Government has not been that straightforward since the 1600s.

Mr. Pollock: What about assessing silos? There is quite a variation in silos in the rural areas. Are they now assessed?

Mr. Hewson: I am afraid I draw a blank. I have never had a silo.

Mr. Charlton: Yes, they are assessed.

Mr. Pollock: Are they assessed at full market value?

Mr. Charlton: It depends on the municipality you are in. If the municipality is a proclamation area, they will be assessed at full market value.

Mr. Pollock: By proclamation, do you mean section 63?

Mr. Charlton: If the assessment in the municipality is under section 63, which is at a percentage of market value, then the silo will be assessed at the same percentage of market value as the farm rate. If they are in an area that is still under the old manual system, then they will be assessed by some kind of a cubic-foot cost approach based on some value from God knows when, 1940 or 1952.

Mr. Pollock: Some special silos are running at \$1,000 a foot. If you have to pay a tax on that kind of assessment, that is pretty steep.

Mr. Charlton: They are assessed.

Mr. Villeneuve: There is no way they add a value of \$1,000 per foot to the property.

Mr. Charlton: It depends on what system they are in. If they are in a market value system, you do not add the cost of the harvester. You have to estimate what they add to the value of the property. If you are in a manual situation, if the municipality has not gone to section 63, then they will be assessed at whatever square-foot or cubic-foot rate the local manual suggests. I hope, if you are using the manual method, some kind of old cost

approach, at least they will all be assessed using the same square-foot rates, altered only by area factors that happen to exist in that municipality.

Mr. Bowlby: In many instances, the old manuals do not provide guidance to the assessors on how to establish a value, cost or otherwise, on buildings that were not contemplated at the date of the manual, whether 1940 or 1950. That is a grey area, a wide-open approach.

Mr. Charlton: In cases like that, with the glass-lined harvesters that did not exist when the manual was created, assessors will take the cost of building a silo that did exist, a concrete silo or something like that, and compare the cost of putting up that silo today with the cost of a harvester and then factor back; in other words, they will create a rate for the harvester silo in 1940, based on the same ratio.

Mr. Bowlby: Mr. Charlton, in connection with your question, which I did not answer, about the starting date of the improvements, section 3 was amended. Alterations, improvements, additions and so on for handicapped persons or seniors commenced after May 15, 1984, effective for 1985 taxation. That has not come up yet. That is a strict interpretation of the language of the act, and I hope it does not come up.

Mr. Charlton: It is likely to at some point, especially when the reductions start to be put in place. Where the construction was commenced after that date, they will clearly get the reduction or they will not be assessed in the first place, but sooner or later people who built similar facilities in their homes for handicapped reasons are going to start coming before your board saying, "I am assessed inequitably with similar properties in the vicinity because I have this and it is assessed and they have got this and it is not assessed."

In other words, they made the renovations prior to the dates you have set out there, but they are going to come in and use subsection 65(1), inequitable with similar real property, and you are going to have to deal with that at some point. Sooner or later somebody is going to come in with that.

Mr. Bowlby: It depends upon the use of section 63 for market value, whatever class it may be, or those that are under proclamation at market value. When the alterations and additions are done on the manual, as we have in several municipalities still, they would have to be looked at on the costing. I would not try to anticipate how that would go.

Mr. Charlton: And you will watch with interest.

Mr. Bowlby: I shall.

Mr. G. I. Miller: Would you not make a recommendation that this might be the case, where it might be retroactive to any handicapped person, so it would be fair to all handicapped people? Could that not come by way of a recommendation from the board?

Mr. Bowlby: May I consult my colleague?

Mr. Hewson: I do not know what the policy of the Ministry of Revenue is going to be. They have not said.

Mr. G. I. Miller: But you could make a recommendation, could you not?

Mr. Hewson: The Assessment Act is administered by the Ministry of Revenue. I would not say--

Mr. Breaugh: Revenue is pretty clear that this is an exemption for one year from that date and that is it.

Mr. Bowlby: One year? Ten years.

Mr. Breaugh: But no one else would qualify for that. As I understand it, that was their intention. There was a one-year date when that exemption applies and it will roll over into other years for those particular people but not for anybody else.

Mr. Bowlby: Under the constitution we are not allowed to interpret the statutes. If it comes up, we will have to see what Revenue says. Subsection 96(b) of the Constitution Act of 1867 is under consideration and maybe in two years from now we would have that right to interpret the section.

Mr. G. I. Miller: Just for the board's information, we have had a quadriplegic who was trying to get assistance, going back before some of these changes came in. The family has had to go to considerable expense in improving facilities and still has to live under those conditions. It seems only fair that they should be granted some reduction in assessment the same as anybody from day one. Would you not agree?

Mr. Bowlby: I would agree. There is no problem in section 63 or 70 in market value situations. The problem comes in those municipalities that are still operating under the manual.

Mr. G. I. Miller: That is the way it has to be dealt with.

Mr. Bowlby: It has been dealt with that way, yes.

3 p.m.

Mr. G. I. Miller: You would not recommend to the Ministry of Revenue that it be changed?

Mr. Bowlby: I mentioned earlier today that the decisions of this board or the Ontario Municipal Board would be an indication of which way the Ministry of Revenue should take those decisions and decisions from the courts of law that have interpreted the sections. We cannot make direct recommendations.

Mr. G. I. Miller: Maybe it could be a recommendation of this committee. That might give some support. We as a committee have the right to do so if we could get unanimous consent on it.

Mr. Watson: The question I wanted to ask really carries on from what Mr. Miller has just said. You have said you cannot make recommendations, but do you have anything that you think should be changed that you would like to tell us about, because we have power to make recommendations?

In other words, do you have what I often call a shopping list of things that should be changed in the legislation to make your board, from your point of view, operate more effectively or efficiently? Are changes required in policy or in legislation about which you would often have said, "I would like to see this"? It is not that I would agree with you, but I am giving you an opportunity to say, "Here are some changes we would like to see."

Mr. Bowlby: I would like to see the implementation of section 63 or section 70 carried out as widely as possible--market value.

Mr. Villeneuve: It is still left up to the local council.

Mr. Bowlby: It can be done by proclamation under section 70.

Mr. Villeneuve: I realize that.

Mr. Bowlby: Or bylaw by the local municipalities.

Mr. Breaugh: You might not want it to be spread quite so widely if you had to go out there and listen to them after they did it.

Mr. Bowlby: I would go no further than that. I am on internal record as asking for section 63 as soon as possible everywhere.

Mr. Watson: Okay. Are there any other changes you would like to see in guidelines or instructions that you have to operate under that are not suitable? Are you happy with the mandate you have?

Mr. Bowlby: Yes. I am satisfied with all operations and instructions.

Mr. Watson: The number of hearing officers you have is not limited. Is that a problem?

Mr. Bowlby: No. We are able to handle the case load with our present members.

There are always changes. We are always open to interviewing and recommending suitable persons, but we are handling the case load with our present membership to our satisfaction--certainly to my satisfaction.

Mr. Watson: From your point of view there are no undue delays in having hearings scheduled, no problems with scheduling hearings so that people get their day in court in reasonable time?

Mr. Bowlby: No.

Mr. Hewson: The delays are being caused by the courts of law, but nobody has any control over the tribunals.

Mr. Watson: How do the courts of law delay your hearings?

Mr. Hewson: Certain matters are referred to them for a legal decision, and until such time as they give a legal decision, nobody wants his matter heard at our level.

Mr. Watson: Can you give me an example of that?

Mr. Hewson: Condominiums. It has been sitting around for years, and finally the Divisional Court has given a decision on it. In the meantime, all parties said they did not want us to proceed until they knew what the result was going to be. That is a prime example.

Mr. Watson: Are you now proceeding?

Mr. Hewson: We are going to proceed now, yes, and clean them up.

Mr. Watson: How far back do these go?

Mr. Hewson: Some go back to 1982. But it is not we who stopped them, it is the parties themselves, naturally, because those who won are happy and those who lost are not happy.

Mr. Watson: I understand that after you make a decision it goes to the OMB and then it can go to a court.

Mr. Hewson: If we follow the decision of the Divisional Court, it will not go any further. Everybody will agree to it. Revenue will not dispute it.

Mr. Watson: Pardon my ignorance, but how does a dispute of that nature get into court before coming to you?

Mr. Hewson: It came to us first and we made a decision. Our decision was then appealed to a judge in chambers who altered our decision. Then the decision of the judge in chambers went to the Divisional Court which made the final decision.

Mr. Watson: Then it did come to you first.

Mr. Hewson: Yes.

Mr. Watson: I was trying to find out how it got into court without coming to you.

Mr. Hewson: Under section 50 of the act, anybody can take a question of assessment directly to court if it involves a point of law. We are only a tribunal, not a court of law. We cannot determine a matter of law. We can apply the decisions, but we cannot make the law.

Mr. Watson: Do you have any difficulty interpreting what is a matter of law?

Mr. Hewson: We certainly do and so do the judges.

Mr. Bowlby: It starts with all complaints against assessment. They come to the Assessment Review Board for the first hearing. In most cases, they are resolved as either questions of fact or of mixed fact and law at our level. Most are dealt with there. Those that go on to the Ontario Municipal Board may or may not stop at the question of quantum or value. They refuse to hear any question of law. Perhaps at that stage, but usually before it, the parties take an application to either district judges or Supreme Court judges in chambers to interpret the law. From there it goes to the Divisional Court and on up as may be. We have no trouble handling it at the first level. Usually the parties want to be rid of it as soon as possible.

Of our decisions over the years, the number appealed to the next level of appeal of the OMB, and before it was the municipal board to the county or district judge, ran between five and seven per cent. The percentage is a little high at present because of the backlog of the numbers of condominiums and others that have been awaiting decisions of interpretation of law.

When the act was amended three years ago and the appeal procedure eliminated the county or district judges, we turned over 88,000 outstanding appeals at the county or district level to the OMB, which was expanded to accommodate assessment appeals.

Part of our backlog is awaiting those decisions. That takes us back as far as 1982 for outstanding complaints on our books. A decision from the Ontario Municipal Board on quantum will wipe out three or four years because it would be applied automatically at the request of the parties, Revenue and the complainant. Other matters will still be outstanding, matters of law as such.

Mr. Watson: Why are they still on your books if you have rendered a decision and that decision is being challenged?

Mr. Bowlby: For one year. It is an annual assessment, an annual right to complain and they have filed protected complaints for the subsequent years. It is four outstanding at the moment on this type, is it not?

Mr. Murphy: From 1982.

Mr. Bowlby: From 1982. A decision on that 1982 decision of ours would in most cases be applied automatically at the request of the parties to the subsequent years, and that would wipe them out.

Mr. Watson: As I understand it, the people have to appeal within a certain time frame.

Mr. Bowlby: Yes. They have 35 days from the return of the roll in the municipality. The last day for complaint in the first round of municipalities was January 8, 1985. For Ottawa,

Metropolitan Toronto, Halton and Peel, it was last Tuesday, February 12. The township of Uxbridge is March 21, the Sudbury school board is March 15 and other section 63 municipalities are March 8. We have those staggered dates. The complaints are coming in and the registrars are organizing the scheduling through the computer process and will produce scheduled hearings starting about the end of April or the beginning of May. It takes about two months to process.

3:10 p.m.

Mr. Watson: I have one incident where a chap thought he had appealed, and I think it was a commercial site, for 1981, 1982 and 1983. He had not filed an appeal on the 1982 assessment because his accountant, his lawyer or somebody slipped up. He got the reduction for 1981 and the reduction for 1983, but because he had not applied for reduction in 1982 or an appeal in 1982, he did not get it.

I may have the years wrong, but it was the middle year of the application, and his argument to me was, "If taxes should have been so much in 1981, and that was confirmed, and then they agreed with me in 1983, it does not make much sense that I have to pay the high tax for 1982." Does that sort of thing happen? Can you see it happen, and do you have any recourse to change that sort of thing?

Mr. Bowlby: We see it happen and we have no machinery to deal with it.

Mr. Watson: So you change it and you admit in 1981 the fellow was overassessed, and you will change the assessment back for 1981 and you will change it back for 1983, but in 1982, because he did not make the appeal at the right time, he has to be stuck with the high taxation.

Mr. Hewson: Because of the wording of the act.

Mr. Bowlby: The act prevents us from dealing with that.

Mr. Watson: Is that one of the things in the act that could be changed?

Mr. Bowlby: That could be changed; it certainly could.

Mr. Watson: Is that one of the things on the shopping list you would like to see changed in the act?

Mr. Bowlby: I would say yes, but I have not kept a shopping list.

Mr. Watson: No, but that happened--

Mr. Hewson: Where there is a series and for some reason somebody slips up halfway through, it is not fair, but because the act says you must file a complaint each year because the roll is returned each year, we are bound by it. We cannot alter it. The

only one that can alter that is the Legislature. Two or three years ago you had to pass a special act to allow 6,000 people in Toronto to file complaints.

Mr. Charlton: There is one avenue this particular person you are talking about could have taken, but it is too late now. Assuming that 1982 was the year somebody screwed up because he had not filed, under section 496 of the Municipal Act, he could apply to the municipality before the end of February 1983, and once the 1981 appeal was decided, the municipality would have the right under section 496 to grant the same reduction for the 1982 tax year.

Mr. Cureatz: Brian, you must have had some of those. I have had some of those. I have never had one where the municipality has allowed it. I have had about 10.

Mr. Charlton: I have never had one where they did not.

Mr. Watson: They are going to hide behind the legislation and say: "We set our mill rate based on that amount of assessment. If we knock that back, we are out."

Mr. Hewson: People can appeal to us.

Mr. Watson: But if the appeal had not been made and the case was there--I had a lot of sympathy for the chap. It was the centre year, and he said it just does not make sense. He was all right from now on. They agreed the thing was overassessed, but because somebody had not filed the right papers on time, it was a higher assessment for that year. I just thought it was a problem.

Mr. Bowlby: We deal with that occasionally, where a group of complaints may be heard late in the year at the time the new assessment roll is being returned. If a decision is rendered by our board before the last day for filing a complaint, the parties often agree to have that decision apply to the subsequent year, if it has been appealed. They are warned in plenty of time. This does not happen very often, but certain of our members are very careful to draw that to their attention, particularly when we are running a little late in the year on hearings.

Mr. Watson: When you say "agreement," do you mean the assessment--

Mr. Bowlby: No. A decision is made for, say, the 1983 taxation year, but it is being heard in 1984 before the last date of complaint, and the parties at the hearing are asked, "Shall this decision apply to the next taxation year?" If they agree, it is endorsed on our record and carried through automatically.

Mr. Watson: The only thing the average citizen really knows is the bottom line. He knows what his taxes are and that is what he goes by. I happen to be on one of the old schemes. I think my assessment is \$3,000 or something of that nature. How do I know what my neighbour's assessment is? It has no relation to what the value of the property might be. It has a relation, obviously, but

it is so far out of kilter that the notice of assessment that comes is meaningless to the average citizen. At least it seems to me it is meaningless when I see this figure on my assessment of whatever it is, \$2,800 or \$3,000.

Mr. Hewson: Because it is only at a certain level of its actual value.

Mr. Bowlby: But you also see on that assessment notice, "If you have a complaint, file it by such a date," right on the face of it.

Mr. Watson: If my assessment is listed as \$3,000, how do I know whether I should complain?

Mr. Bowlby: To go back to the illustration you used, the individual should have looked at his assessment each year and remembered that the 1982 one was out, or whatever year was under appeal. If the decision was not translated to the assessment notice, he should have filed an appeal. This is a burden on the taxpayer, but it is easier when it is under market value.

Mr. Watson: It is easier, but you do not realize it until you get your tax notice the next year. That is when you find out. One of the problems of that system is that if they have upped it--and I have had the happy pleasure of having that happen at one time--it does not look like very much. If you raise it by \$500 on a \$3,000 assessment, the percentage is pretty hefty, but the amount it is raised does not hit you at the time you get your assessment notice. I guess that is a problem of reassessment.

Mr. Bowlby: In most municipalities the interim taxation bills for 1985 are out before the assessments--not in all, but in most.

Mr. Pollock: Getting back to this situation with regard to the handicapped, before this regulation came in, did assessors make a point of coming in and raising assessments on properties, say, if an individual put in a wheelchair ramp or some such thing?

Mr. Hewson: It had to be \$2,500 or more of increased market value before it was looked at.

Mr. Pollock: I know of one situation where both children had muscular dystrophy and the washrooms had to be moved downstairs. I suppose that whole operation could cost more than \$2,500, but it would not increase the value of that property at all.

Mr. Hewson: I do not know how they evaluated that \$2,500 either. They were pretty lenient with it, I think.

Mr. Pollock: So this whole thing about forgiving an assessment is an iffy thing from start to finish?

Mr. Hewson: They raised it last year to \$5,000. Recently, the only hearings we have had concerning this were in

the cities. The municipalities have been complaining that the assessor was not adding on this value. The cities have sent their own inspectors out and said: "This fellow has put in a recreation room and built a garage. We want this added to the roll." They say the assessors have not been doing their job.

Mr. Pollock: I am mainly talking about the disabled in that respect.

Mr. Hewson: The same thing applies. I do not think the assessors have been prowling the neighbourhoods looking for this sort of thing.

Mr. Pollock: I see. Regardless of whether it was for a disabled person or just an ordinary individual who has put another room on his house?

3:20 p.m.

Mr. Hewson: Right. If you put a room on, that is a pretty big addition these days.

Mr. Bowlby: That is why the municipalities have developed assessment departments of their own, assessment advisers, to look into these and search out the building permits issued in a municipality to see whether the assessment branch has translated that into an addition to a particular property. I mentioned earlier that there are some 11 or 12 municipalities that are doing this now or are on the verge of doing it.

Mr. Pollock: Having their own scout out, you might say?

Mr. Bowlby: Yes.

Mr. Pollock: I know that in certain areas in my riding there was cottage after cottage that was not on the rolls.

Mr. Bowlby: It started in Windsor, primarily, and Mississauga, where they have the assessor of the municipality, a special investigator, seek out particularly the building permits to make sure they are on the rolls as soon as possible.

Mr. Pollock: In these cases they have never even bothered with the building permit. They just went and built the cottage and that was that.

Mr. G. I. Miller: Do they not have to get building permits down there?

Mr. Pollock: They were supposed to but they just did not bother. Some of these people from Toronto went down there and forgot about all the rules when they got down in that country.

Mr. Charlton: We found dozens in Grey county when we were doing--

Mr. Hewson: I would not doubt it.

Mr. Charlton: All kinds of buildings had never been assessed.

Mr. Chairman: I have one question concerning the 163,000 appeals that you referred to. I found that quite shocking. How many of those do you estimate are caused by silliness in coming to you?

Mr. Watson: There could never be a silly appeal unless a lawyer was called.

Mr. Chairman: I mean the cause for the appeal was silly. As one example, long before I was in here I had a client who had a two-storey building with a commercial first floor and apartments on the second. It was in the middle of the city and it burned to rubble. It certainly was well known; there was a death involved and so on. He then put a bulldozer on to the rubble and built a new one-storey commercial building.

He got his assessment for the new building and he got his assessment for the two-storey building. Even though the new building was in place, and there was business in it and so on, they refused to acknowledge the fact that the two-storey building was no longer there. One was exactly on top of the other; they could not both exist. They said: "We are sorry. We cannot remove the two-storey assessment from the computers. We cannot do this manually. You must appeal."

Fine. We appealed. We walked in there and told them. They said, "Sure, fine." Clunk and out we went. It was a silly situation that caused that appeal.

How many of these 163,000 appeals are that type of silly situation that would never have occurred if somebody had been able to work the computer or have some rules whereby they could shut it off?

Mr. Hewson: That is pretty difficult to answer, sir. I would not say it was the computer that was silly; I would say it was the assessor who was silly in this case. It is obvious. You cannot have two buildings on the same site.

Mr. Chairman: Yet they forced an appeal and the assessment office stated that it could not remove the previous building short of an appeal. Those are the rules? They were correct? The assessment officer was correct in his interpretation?

Mr. Hewson: I do not agree with it, but--

Mr. Charlton: He was not correct.

Mr. Hewson: It was not correct. I do not know why he did it.

Mr. Chairman: We certainly hassled it out because it had no logic to us.

Mr. Hewson: I agree. It should never have come before us.

Mr. Chairman: We certainly all agree there except that it did. I wonder how many of your 163,000 are caused by the same--

Mr. Watson: If it had not come before them, you would not have been able to represent him and you would not have been able to charge him that fee.

Mr. Chairman: I probably had no fee at all because most lawyers work for charitable reasons.

Mr. Watson: Let us have a pity party here for the lawyers.

Mr. Charlton: Just on this matter, what is second--

Interjection.

Mr. Charlton: After the roll has been returned, the assessors cannot alter the rolls except under section 33. Normally the procedure in a case like that would have been to reassess the entire property when assessing the building under section 33 and to submit a supplementary. That is what should have happened and that is what normally happens. Why they insisted on doing what they did--

Mr. Murphy: They cannot write the taxes off--

Mr. G. I. Miller: I have one other question with regard to basing assessment on income for hotels. Was that an indication--

Mr. Bowlby: Hotels. Is that apartment--

Mr. Hewson: It depends on the Ministry of Revenue. There are three approaches: market sales, income or cost approach. It is up to Revenue to determine which approach they are going to take.

Mr. G. I. Miller: Is that the individual assessor on the tax roll?

Mr. Hewson: The assessor, yes. It is usually his decision or the manager's or someone inside. If it is an income-producing property, then they will assess it on an income basis. What they have to defend before us is the methodology they use, using the income in arriving at their assessment.

Mr. G. I. Miller: Does it apply to restaurants?

Mr. Hewson: No. Usually hotels, high-rise apartments, plazas and shopping centres. Another new one is retirement homes where you rent a suite in a retirement home.

Mr. G. I. Miller: Can it be used for relief in taxes, relief in the amount of tax?

Mr. Hewson: Which is that? Retirement?

Mr. G. I. Miller: An example, I guess, is if income is down and taxes remain the same, excessively high.

Mr. Hewson: The income is not based on the actual income. It is based on an average. They calculate, using a formula, what they consider the income should be. For example, in an apartment house, they do not take the actual rents; they take what they call market rents. They decide what rents they think should be applied.

Mr. Charlton: They do it the same way as they do market value on a residential home. They take all the similar buildings in a municipality, collect all the current rents, or rents in the year that is the base year, and work out an average market rent for that type of unit. So the rents may be lower or they may be higher in the building you live in, and that is what they use as the market rent or the average rent.

Mr. G. I. Miller: I asked the question because, with high investment a few years ago and with the economic turndown, I was trying to find the principle of relief of the taxes to make it a viable operation. I guess you just have to go by the guidelines laid down on an average basis.

Mr. Hewson: Yes.

Mr. G. I. Miller: The answer would be there would be no appealing on that basis.

Mr. Hewson: Usually on a luxury hotel they give it up to about five years to get on stream, in other words, fully functional. If it has clientele coming, its occupancy rate is good and it is making money, then they decide to fix that income. It is usually good for 10 or 15 years, and after that the income starts to skid, unless they start renovating. It is all based on experience and formulae and calculations.

Mr. Breaugh: It has no relationship to reality.

Mr. Hewson: Well, yes. It has been determined by study. If you take luxury hotels, they look at all luxury hotels in the province and there is a pattern. I think that formula comes from the United States. It was developed there. It take five years to bring the Westin Hotel on stream. Then it has 10 or 15 glory years and then it starts to go downhill with cigarette burns in the carpets and people stealing all the laundry.

Mr. Chairman: Thank you, gentlemen, for appearing before us and answering our questions.

Committee members, the plane tickets for Boston will apparently be here tomorrow morning and you will have them. The previous work involved with the first Sunday night is apparently not taking place down in Boston, so that will be open.

The committee adjourned at 3:30 p.m.

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STANDING COMMITTEE ON PROCEDURAL AFFAIRS

REVIEW OF AGENCIES, BOARDS AND COMMISSIONS:
HEALTH DISCIPLINES BOARD

WEDNESDAY, FEBRUARY 20, 1985

Morning sitting



STANDING COMMITTEE ON PROCEDURAL AFFAIRS

CHAIRMAN: Treleaven, R. L. (Oxford PC)
VICE-CHAIRMAN: Watson, A. N. (Chatham-Kent PC)
Breagh, M. J. (Oshawa NDP)
Charlton, B. A. (Hamilton Mountain NDP)
Cureatz, S. L., (Durham East PC)
Edighoffer, H. A. (Perth L)
Kells, M. C. (Humber PC)
Mancini, R. (Essex South L)
McNeil, R. K. (Elgin PC)
Miller, G. I. (Haldimand-Norfolk L)
Rotenberg, D. (Wilson Heights PC)
Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Substitutions:

Hennessy, M. (Fort William PC) for Hon. Mr. Kells
Pollock, J. (Hastings-Peterborough PC) for Hon. Mr. Rotenberg

Clerk: Forsyth, S.
Assistant Clerk: Decker, T.

Staff:

Eichmanis, J., Research Officer, Legislative Research Service

From the Ministry of Health:

Hastings, L., Registrar, Health Boards Secretariat

From the Health Disciplines Board:

Mackenzie, K. N., Chairman

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON PROCEDURAL AFFAIRS

Wednesday, February 20, 1985

The committee met at 10:11 a.m. in room 228.

AGENCIES, BOARDS AND COMMISSIONS
(continued)

HEALTH DISCIPLINES BOARD

Mr. Chairman: We have before us the Health Disciplines Board. Hugh Mackenzie is the chairman and Miss Louise Hastings is the registrar. To start, do you have any opening statement, either verbal or written?

Mr. Mackenzie: Mr. Chairman, I was not prepared with an opening statement as I did not understand that was required.

Mr. Chairman: No, it is not required.

Mr. Mackenzie: It was suggested to me a moment ago that I might say a few words, and I think I could off the top of my head.

Mr. Chairman: Yes, just generally tell us what the board does; give a general overall view.

Mr. Mackenzie: The Health Disciplines Board was formed in 1974 in an attempt to provide a lay look at the self-governing colleges that came under the Health Disciplines Act. These colleges are the College of Physicians and Surgeons of Ontario, the Royal College of Dental Surgeons, the College of Optometrists of Ontario, the College of Nurses of Ontario, and the Ontario College of Pharmacists.

The board consists of seven members: a chairman, a vice-chairman and five members.

The function of the board could be best discussed in two parts. They have a complaint function, which is done in the milieu of a review. The board is required, when asked to review a decision of the complaints committee of a college, to determine whether that decision was properly investigated and whether the conclusion that was arrived at by the complaints committee was a fair one.

The function of the complaints committee of a college under the act is to determine whether the complaint before it has enough substance to warrant a charge of professional misconduct against the member who is the subject of the complaint, which would result in a referral to the discipline committee.

The colleges in Ontario are self-governing and the purpose of the board was to provide an outside, independent, lay look, if

you like, at their governance as opposed to taking over the governance itself. The college performs a function and the Health Disciplines Board's job is to ensure it performs it properly.

The board has at its disposal the right to do certain things in a complaint review. If it is not satisfied with the investigation or the decision of the complaints committee, it can return the matter to the complaints committee, asking them to investigate the matter further.

It can make recommendations to the complaints committee as to what they ought to do. It can return the matter to the complaints committee and require it to refer the matter to the disciplines committee of the college which then requires a discipline proceeding against the member to take place.

In relation to our second function, the board acts as an appeal body to proposed registration decisions of a college. In Ontario--with the exception of nurses; to allow graduate nurses to practise--in order to practise their profession they have to be licensed with their professional college. Where a registration committee of a college proposes to refuse registration to an applicant, that applicant has the right to appeal that decision through our board. Where our board finds that the appellant meets the requirements of registration, it has within its power the ability to order that person to be registered by the registrar of the college.

I think that, in a nutshell, outlines our general procedures.

Mr. Chairman: Questions? Mr. Watson.

Mr. Watson: Who is a watchdog to whom here? Where do you fit in?

Mr. Mackenzie: That is an interesting question, Mr. Watson. The Health Disciplines Board, at the risk of some controversy, has taken the position that there is a duplication in the present system inasmuch as there was no Ombudsman in 1974 when the Health Disciplines Board was formed.

The intent of the legislation at that time was to provide a lay body in the sense that none of the members of the board now belongs, or has belonged, to any of the health professions over which they have a jurisdiction. Their job was to act in the public interest to ensure that the complaints committees of the colleges were doing their job in relation to disciplining their members. That was, in effect, an Ombudsman type of role.

When the Ombudsman Act came into being, the Office of the Ombudsman had jurisdiction over the Health Disciplines Board, so what you have in effect at the moment is a watchdog watching a watchdog. You have the function of the Health Disciplines Board, which has powers that the Ombudsman does not have. We can make requirements of the colleges, which the Office of the Ombudsman Office is not able to do. Having gone through that process, our decisions are subject to an appeal to the Ombudsman with respect to what he is able to do under the act.

Mr. Watson: Do you see it as a problem? Do you see it as a duplication?

Mr. Mackenzie: We certainly do and we have reported that in our last two annual reports. We see it as a waste in many instances. For instance, the administration in the secretary's office alone with respect to those things has increased as a result of the jurisdiction of the Ombudsman. Also, if one looks at the intent in the first instance, one wonders why it has to be done twice.

Having said that, the board enjoys the highest level of co-operation with the Office of the Ombudsman. I do not have statistics with me today on the number of complaints that have been investigated by the Ombudsman, but they are numerous. I think in only one instance was a comment made by the Ombudsman that would be contrary to the actions of the board.

Mr. Watson: What is your solution?

Mr. Mackenzie: The board does not have a solution inasmuch as we think that matter lies with the minister. Certainly the Ombudsman Act does provide for the exclusion of certain areas if, in the eyes of the Legislature, that is deemed to be a proper thing to do. That may be one solution. It may well be--and I have said this publicly--that the Health Disciplines Board is not the answer, although I happen to believe it is. I am simply questioning the need for two watchdogs in the health disciplines area.

Mr. Watson: With respect to the authority you have or you would like to have, do you feel you have enough power, enough of a mandate or too much of a mandate, in terms of the authority under which you operate?

10:20 a.m.

Mr. Mackenzie: Mr. Watson, in the first instance the philosophy of the act was to allow the colleges to maintain the principle of self-governance.

In that context the board has all the powers it needs to oversee the proper exercise of that responsibility and, indeed, has the ability to tell them when they are not doing it and to require them to do otherwise. So I believe it is a good public check and at the same time maintains the philosophy of self-governance, which was the decision of the Legislature.

Mr. Watson: What about the issue of confidentiality matters? Are you happy with that status? Are there things you must give out that you do not like to, or are there things you would like to give out that you are not allowed to?

Mr. Mackenzie: The issue of confidentiality of records is probably the most controversial issue and the most difficult one that the board has handled in its years in office. It is a motherhood statement that a patient ought to be able to have access to his own files. Unfortunately, it is not that simple

inasmuch as, especially in front of our board, there are often third parties involved.

The board operated for a number of years under the belief that it was restricted by section 65 of the act, which is a secrecy provision, from releasing to people before it any of the material it received by virtue of the requirement of the registrar to give the board all material it had in front of it. When the board was under that stricture, or when it believed it was under that stricture, it often found itself in a position where it had material before it that it felt the complainant--or, in some cases, the respondent--ought to have in order to perform his function before the board properly, and we felt restricted in our ability to give it to him.

When the Stumbillich case was heard in the courts, the courts found two things. They found that the board in its procedure--and the board has the ability to set its own procedure; I am now talking about the complaint review process--had moved away from a strict review process as contemplated under the act and had moved to "a type of hearing," to quote the court. Having moved to a type of hearing, it had more responsibility to release the record than it would have had under subsection 8(2) purely as it sits in the act. So the board was required in that instance to release the entire record.

The court also found--and this was a very important matter to the board--that the board did indeed have discretion in its ability to release the record, so the board has now revised its procedures and has moved more closely to subsection 8(2), which is to hold a review. As I remember the act, it says specifically, "shall review the decision after giving the complainant an opportunity to state his complaint and the member an opportunity to state his answer." That is all that is incumbent on us by virtue of the legislation.

So we have moved back closer to that particular procedure, and at the same time we exercise our discretion in relation to the release of records and will--I would not like to say "routinely," but in most instances--release the hospital record to any patient who feels he needs it in order to state his complaint.

There is still the very tricky matter of correspondence between physicians or members who have been consulted by the colleges for purposes of an opinion on the merit of the complaint, because one has to be careful that the process is not abused to the point where those letters are no longer forthcoming; so the board does use its discretion.

But to answer your question in a short sentence, I think the board is now comfortable, given the Stumbillich decision and given the new procedure of the board, that we have the ability as a board to release confidential documents when we need to do so and at the same time not to release them when it is not in the best interests of the people involved.

Mr. Watson: Do you release them in part with names blocked out and so forth?

Mr. Mackenzie: No. With respect to the record, if someone makes an application to us for the record, he gets the record as it stands. We would normally release that record only to a first party, so it is usually his record.

With respect to the decision itself, the board normally sits in camera--and if you are interested, I can go into reasons for that at a later time. When we release a decision--we release them in bulk--at that point, we release it with the names and the institutions crossed out, because it is a confidential review.

Mr. Watson: Is there a requirement that you give reasons for your decision?

Mr. Mackenzie: I believe the act says that we give a decision and written reasons. "The board shall give its decisions and reasons therefor in writing to the complainant and the member against whom the complaint has been made."

Mr. Watson: When the decision which comes out with the names blanked out, do the people against whom the complaint is made get the first copy before the names are blanked out?

Mr. Mackenzie: All of the people directly involved in the complaint get a clean copy. Only when it is released to the press are the names and institutions, towns or anything that is particularly identifiable, removed. This is for two reasons, one of them being that many people involved in these things--and often you are talking about very tragic and very sad circumstances--might well not come forward if they thought it was going to be a matter of public record.

Mr. Watson: What about the timetabling of people with complaints? Are you able to keep up?

Too often we hear of so many undue delays with these boards. What is your board's record on that basis? After a complaint has been lodged, how long is it before it is heard? How long is it before it is disposed of? What is the typical time frame?

Mr. Mackenzie: Mr. Watson, I would say the board's average waiting period, once it receives an appeal, is between three and four months from the time it receives notice of appeal to the time it disposes of it. The exceptions to this are matters which are up for judicial review for one reason or another and they have obviously a much longer turnover.

One must remember that by the time a complaint reaches the appeal stage at the Health Disciplines Board, it is probably upwards of a year from the time it was first lodged, because there are other processes it goes through before it comes to our board. We attempt to dispose of it as quickly as possible. One thing we have done in the last year or two to try to facilitate the time lag is to give oral decisions where we can, which cuts four to six weeks off the procedure.

Mr. Watson: Do the people who are appealing in a serious matter have any rights while they are awaiting your decision? I am thinking of--

Mr. Mackenzie: Do you mean litigation rights?

Mr. Watson: Yes. Assume that a doctor might have lost his privileges at a hospital. Would that sort of thing come to you?

Mr. Mackenzie: No, sir. That is not likely to come before our board.

There are instances where the respondent, that is to say the doctor, appeals the decision of the complaints committee, but in a vast majority of cases it is a patient who complains. The process that they are appealing to us is most often a decision not to refer it to discipline. Only the discipline committee of the college has the right, under law, to take away a licence through that procedure. The executive committee of the college has the same right.

Mr. Watson: Can they not appeal that decision to you?

Mr. Mackenzie: No, sir. Those are appealed directly to the courts.

Mr. Watson: You do not enter in the cases where a doctor loses his licence.

Mr. Mackenzie: No, sir. Our power stops at our ability to force a discipline hearing. Once that hearing is in progress then the appeal is to the courts.

Mr. Watson: What I was going to ask was, in those kinds of cases I was imagining, does the doctor have the right to continue to practise until the case is heard, or does it cut off?

10:30 a.m.

Mr. Mackenzie: He has the right inasmuch as usually he is not charged with anything at the point he is before us.

There is a short-circuit process--if you want to call it that--which can be used through some of the colleges where a complaints committee or any other committee of the college sees a real problem, or they believe someone ought not to be practising between now and the time the matter can be disposed of, they can refer to the executive committee of the college. I believe that committee has the power to stop them from practising pending the outcome of the investigation.

Mr. Watson: That is the sort of thing I wanted to lead up to, people whose credentials are being questioned. If they have a licence to operate with certain credentials and somebody questions their credentials, does that sort of decision come to you?

Mr. Mackenzie: No, and where their credentials are being questioned, if it does not go directly to the discipline committee, in other words, if it has the ability to come to us, then the practitioner has no encumbrance on his ability to practice.

Mr. Watson: On numbers of complaints, do you have a rough figure of how many you have and the categories they fall into? You say most of them are patients.

Mr. Mackenzie: The vast majority are patients, because very few doctors or professionals are going to appeal if the complaints committee finds there is little ground for the complaint. It does happen, believe it or not.

In 1984 the board reviewed 134 complaint reviews, of which 94 were medical, 32 were dental, six were nursing, one was optometry and one was pharmacy.

Mr. Watson: How close to a yes or no decision do you have to give? With most of them do you take a middle of the road type of thing? Is it, "Yes, you can proceed," or "No, you cannot proceed"?

Mr. Mackenzie: You may be confusing our registration function with our complaint function. What I have been talking about to date is our complaint function, which is merely that someone has complained that a doctor has done something wrong which may have a varying degree of consequence if he went to discipline.

In a registration matter, if somebody came before us--and I will go back to your previous question, you are quite right--they are stopped from practising until such time as we make an order, because the proposal from the college is not to give them a licence.

In matters of complaint, the board's function is to determine whether or not the complaints committee came to a proper conclusion. We will either confirm the decision of the complaints committee or we might say we agree with it but we think there are a couple of points that ought to be made and we will make those points. We might say we do not agree but think the matter should have gone to discipline and they should send it there. We force them to do it.

In matters of registration, we can make a recommendation to the college that it reconsider its decision not to register, or where we find that the act clearly says they deserve to be registered, we can order them to be registered. We can do black and white things, if that is your question.

Mr. Watson: Yes. On complaints, are the recommendations you might make part of a discipline hearing or does a discipline hearing start from scratch?

Mr. Mackenzie: The discipline hearing starts from scratch and charges are laid and the college becomes the

prosecutor. Our experience is that they fulfil that function well when it comes to a discipline hearing.

Mr. Watson: So your decision in that is almost black and white, that yes, it proceeds to discipline or no, it does not proceed to discipline.

Mr. Mackenzie: That is correct. We have that middle ground where we can suggest that a doctor be reprimanded or not reprimanded, be cautioned or warned or advised, so that in the public interest we are making a point with the practitioner, but without putting him through a procedure that is not warranted on the basis of the evidence before us.

Mr. Watson: How does that get translated back to the doctor? Does that have to go to the discipline committee and it seeks your advice?

Mr. Mackenzie: No, sir. We can do it two ways. We can simply do it in the body of our decision. More often, we would return it to the complaints committee of the college and, depending on the degree of severity we want, we could either request it or require it to advise Dr. So-and-so of such and such, in terms of that sort. However, we cannot take any punitive measures. That can be done only by the discipline committee.

If we think those types of measures are justified, we can only order a discipline hearing.

Mr. Watson: Are the people who come before you represented by counsel or do they come on their own?

Mr. Mackenzie: In the case of medicine, almost every respondent is represented by counsel. Far less often the complainant is. At times they are.

I would point out that our procedure is one in which the complainant and respondent are invited to state their sides of the story, but there is no cross-examination and no hearing procedures that are technical in nature. We conduct as informal a review as we can because most of the complainants we have before us are very much out of their element.

Mr. Watson: They probably are, and I guess that is the basis of the question: what rights do they have?

Mr. Mackenzie: The right they have before the board is to state their complaint. The respondent can give his answer. It is not a trial de novo. They do not have a case to make as it would have to be in a discipline hearing. They simply state the facts of their complaint and if they find they are having problems, it is one of the duties of the person in the chair to draw that out for them.

In addition to that, I would say 50 per cent of each review is a questioning process by members of the board. The purpose is to make sure both sides, and especially the complainant, simply

because he or she is more often unrepresented, have everything they want on the table.

Mr. Breaugh: I want to explore a few areas with you this morning. I suppose I should state my bias at the beginning. I am one of those who feels there are a lot of watchdogs that really do a lot of watching and not much dogging in this situation.

There is almost a typically Canadian attitude to this problem in trying to be very polite, almost paternalistic, in the way we proceed. We have internal, self-regulatory colleges here and then what is purported to be an external health disciplines board over that. In my experience, the net result has not been very positive if one compares it, for example, to the American approach in which everybody gathers up lawyers and goes off to court. Malpractice suits are a relatively common occurrence there. I guess I would have to say I am not very happy with that, but I am even more unhappy with our Ontario experience.

It has been my experience that when people put complaints into the colleges the deck is pretty much stacked against them. They are attempting to get one physician to provide testimony against another, which is very difficult. I think the most frustrating experience, and I would guess most members have had similar ones, is that a physician will tell a patient something was done improperly in a hospital, for example, but will not put it in writing. The complaint goes to the college, where the physician may well be reprimanded, but there is not very much in the way of fairness or justice supplied to the patient who has been offended.

The health disciplines board may kick in and that process again seems to me to be quite internalized. Perhaps this is what is at the heart of the mistake here, but they go to a process that is rather arbitrary and a little on the paternalistic side for my taste.

10:40 a.m.

As you said earlier, you decide whether or not this will be in camera. You decide whether the full argument has been put forward. You decide whether you will or will not release information. You decide whether the doctor's name will or will not be released.

Mr. Mackenzie: That is not correct. We do not have the right to decide whether the doctor's name will be released.

Mr. Breaugh: So when you publish your reports of the findings and the doctor's name is not present, who does decide?

Mr. Mackenzie: It was a decision of the board to do it that way in the first instance, but there is the law of confidentiality to be considered.

Mr. Breaugh: Can you explain that little contradiction to me? You just said the board decides whether the name will be

released and yet you told me you do not decide whether the name will be released.

Mr. Mackenzie: The board decided at its inception, on legal advice, that it could not release the names of the people involved.

Mr. Breaugh: So the board decided at its inception, on legal advice, that it could not release names?

Mr. Mackenzie: It was not able to do so.

Mr. Breaugh: But the board itself made that decision?

Mr. Mackenzie: The board accepted its legal advice, yes.

Mr. Breaugh: No court told you that?

Mr. Mackenzie: That is correct.

Mr. Breaugh: Forgive me, but I interpret that to mean you decided.

Mr. Mackenzie: All right, sir, that is fine.

Mr. Breaugh: I would like you to comment on this. Obviously I came to the hearings this morning with a bit of bias. I am struggling with two concepts of how to handle complaints, neither one of which strikes me as being ideal.

There is the American system, in which at least I can say everyone gets his lawyer and everyone goes off to court. It is done in open court in the way any other complaint, allegation or criminal charge is handled, and at least everyone gets to see the rules of the game. In our system here in Ontario, to be the devil's advocate for a moment, from the patient's point of view the deck is stacked. It is tough to make a complaint and it is tough to substantiate a complaint. In the end you do not get very much out of it.

We do have a little bit of case law being established now around lawsuits. We do have a few precedents now where people have laid formal complaints before the courts. To my knowledge, most of them have been settled out of court. No precedent is set, but they say: "Here is some money. Go away and forget about this."

I would like to hear comments from the board about what we might do to provide the people of Ontario with a fair opportunity to lodge a complaint in a way that would be better than the system we have now. Is the answer to put the Ombudsman to work on this? Obviously, you will say no.

Mr. Mackenzie: That almost sounds like, "Are you still beating your wife?" but I will do my best to answer the question.

Mr. Breaugh: Let us get that one out of the way first. Are you?

Mr. Mackenzie: It is good to compare the situation in the United States with the situation in Canada, if you understand the differences. What happens in the American courts is litigation for malpractice, as opposed to a disciplinary procedure for doctors. For the purpose of the discussion, we will talk about doctors as opposed to other members of the profession.

I believe one of the reasons the litigious process in Ontario is less frequent than it is in the US is because you have the process, before you go into the courts, of sitting down and taking a good look at what really happened. I believe that is a plus rather than a minus. The two functions are different. You still have a litigious process in Ontario. You just do not have it to the same degree. I do not know what the disciplinary process is in the US, but it is not the process that is before the courts. That is a litigious process for malpractice.

I cannot remember the words you used, but the suggestion was that the board was perhaps biased towards the profession. I do not think that is borne out in fact. About 15 per cent of the board's decisions are returned to the colleges. If you keep in mind that we are an appeal body and not a body of the first instance, that statistic probably holds up favourably with, if not better than, the statistics in most appeal courts.

Our board looks very carefully at the evidence before the complaints committee to determine whether there is any material that might substantiate the complainant's complaint. More importantly, in many instances the process we go through allows a full airing of the circumstances so that the person who has a problem he feels so strongly about that he has to go through this process can go away, perhaps not agreeing, but understanding better what happened on the other side.

You said a number of other things and I am afraid I do not remember them.

Mr. Breaugh: Let me go back to it in a slightly different way. My problem stems from the fact that I have had the opportunity to observe the board in several cases. I cannot say I have had a very happy experience with it. I cannot say that the people who dealt with the board came away with the feeling they were dealt with--I do not mean to say the board did bad things to individuals; I only mean to point out that I believe there is a serious problem and we are not getting at it.

People say to me: "I laid a complaint and the first thing I had to do was go off to the college. It was internalized and I do not know what happened there. They asked me to provide evidence and I could not get evidence because I asked a member of the profession to give me something I could use and he would not do it. He told me it, but he would not put it in writing. There was difficulty gathering enough evidence to make a case. It was all internalized so I did not really have much of a chance. Then I went to a secondary board. It took a long time and the end result was not satisfactory either."

What throws this mix out of line is that if we were talking about whether my fence was in the right place or not, people would probably accept this. However, to give you a concrete example, a woman came to me last year about a brother who had gone to a hospital and the operation did not turn out right. Most people do not understand what operations are all about. They do not understand the language, the techniques and the ramifications.

What she did know was that a perfectly normal human being went to a hospital in Ontario and came out a vegetable. She heard something went wrong in the operating room. To this day she really does not know what went wrong. She certainly has not been able to gather anything that you could call evidence, but she knows something went wrong during the operation. She has tried at every turn to do something about it and has found it an incredibly frustrating process (a) to get evidence, (b) to do something about it and (c) even to find a place to go where it can be resolved.

Mr. Mackenzie: Perhaps I could comment. The complaint procedure in Ontario does not replace the ability of litigation. What you sometimes get mixed up with is that a person still has at his disposal lodging a complaint against the doctor. He still has at his disposal the full gambit of litigious action that he can take, quite separate from laying a complaint against a doctor for purposes of professional misconduct.

If he goes that route and decides to sue the doctor, he does not need to have gone through a health disciplines procedure first; he can simply do it. If he decides to do that, all the rules of law, evidence, discovery and so on come into it and he can go that route if he wishes.

Mr. Breaugh: May I stop you there? This is part of the serious problem. In theory, what you have said is exactly true. When somebody says something bad happened in a hospital, a dentist's office or wherever, and asks what can be done about it, perhaps I am part of the problem because I explain that there is a College of Physicians and Surgeons of Ontario that has an internal committee and that there is a Health Disciplines Board.

I am sure when that person is talking to another doctor the doctor does not say, "Sue them." That is not the way we do things. We say, "There is a complaint procedure; use it first." Perhaps it is cleaner in the United States. Perhaps in the United States the first person you turn to is a lawyer and the lawyer says, "We will go to court." That is not our instinct. That is not the way we handle things in Ontario. We have these complaint procedures and we encourage people to follow them.

Mr. Mackenzie: There has never been any encouragement I know of to follow them in lieu of one's rights in court.

Mr. Breaugh: I tend to disagree. I tend to think when you go to a hospital and talk to people they say: "You have grounds for complaint. Here is how to fill out the form. Send it off to the college. If you do not like that, take it to the health complaints board." In theory you are right, but in practice we do not do that.

10:50 a.m.

Mr. Mackenzie: To take it one step further, even if they go through that process, once the process is completed, they still have every right they had beforehand in terms of litigation.

Mr. Breaugh: Again, let me just interject for a second. They still have that theoretical right of litigation, but now what they probably have is a college saying that nothing bad happened here, and you saying nothing bad happened here, and then we are now suggesting that you can go to court with two decisions essentially saying that the doctor was right and the patient was wrong. That is not exactly the ideal way to enter a courtroom.

That is my problem. I accepted for a long time the notion that all professions have a right to be self-governing. I think the difficulty I am hung up on here is that for some instances I would say we are talking about disciplinary action on how someone practises a profession. But I am now being convinced that there are more and more occasions when we are not really talking about whether the doctor did a good job or not.

We are talking about someone's legal and moral rights for the rest of their existence on this earth that have been lost in here, and we do not have a mechanism to even address that, let alone retrieve it.

Mr. Mackenzie: Sir, I doubt if I can change your mind but all I would emphasize is that in my opinion what we have in Ontario is an additional procedure for a complainant as opposed to taking something away from him. They still have their full rights of litigation, but if they do not want to go that route, according to our legislation they have the right to have the thing really carefully looked at to see whether that doctor ought to have been charged with professional misconduct.

I believe we have an additional procedure as opposed to what I believe you are saying is one that is less thorough than that in the United States.

Mr. Breaugh: This is at the heart of the problem here. We have set up a number of ways to handle a complaint about improper procedures or improper treatment. Because we set those up and because we encourage people to use those, we downplay what is a legal right.

In practice, I think you would have to agree that in Ontario the concept of getting a lawyer and going to court is not used. That is a rarity. The common thing is to go through the complaints procedure. We encourage people; we have these agencies in place to do that. You are a part of this process. I do not know if we are doing everything we can, but we are doing a lot to encourage people to use the established procedure of laying a complaint against the doctor, dentist, nurse, or whatever. I am becoming concerned that in doing that we are really denying people what would normally be taken as a legal right.

Mr. Mackenzie: All I can say to you, sir, is that I have explained my point of view the best way I can and I do not agree with you.

Mr. Breaugh: Okay. Let me go to a couple of other things then. You do accept as a practice that your reviews are held in camera.

Mr. Mackenzie: Yes. I am going to backtrack a little bit because I agree that the reviews are held in camera, but the board takes the position that it has the ability to open them up where they believe it is in the public interest. In fact, about two years ago, the Health Disciplines Board did decide on application that it was in the public interest to open a review to the public.

That had to do with a review surrounding a death at the Hospital for Sick Children. A newspaper intervened and the board voted to open it. The board was taken to court by the College of Physicians and Surgeons of Ontario to challenge our ability to make that decision. The court upheld that we could, indeed, establish our own procedure, which included a decision as to whether or not it was in the public interest to hold a review in public.

Mr. Breaugh: Okay, so you have established that you can--

Mr. Mackenzie: Yes, sir.

Mr. Breaugh: --but the practice still remains that you hold most of your hearings in camera.

Mr. Mackenzie: That is correct, sir. We hold most of our reviews in camera now. My understanding is that we do not have the option in relation to registration hearings. In fact, the board did hold registration hearings in public and learned, as a result of one of the cases that had recently been before the board, that it had to hold them in the same forum that a disciplinary procedure is held, which is in private. My understanding at the moment is that we do not have the option of holding hearings publicly. We do have the option of holding complaint reviews in a public forum.

Mr. Breaugh: Let me dwell on this just for a second because this is a matter of some concern to me. First of all, I want to say I think I appreciate the original notion of doing this in private. If you are talking about a self-governing body and it wants to exercise some kind of internal discipline, it seems to me there is an argument there that I understand.

On the other hand, when it comes to your board holding these things in camera, I have some real concerns about that. They are the same concerns you would have, I would imagine, if this morning the procedural affairs committee decided to exclude the press, the public, and to review your board in camera. In other words, it would be as if we invited you into our little bailiwick in secret and will do what the hell we want with you. We will publish what we see fit and we will release your names if we think it is proper to do so, and you are just left hanging on the vine. So the whole process is a secret process unless we choose to make it otherwise.

I would like you to address, for a moment, the arguments which I am sure you have for saying the in camera approach is the proper norm for the way you do your business.

Mr. Mackenzie: I will be very frank with you. This is something that we--agonize is maybe too strong a word--think about as a board all the time. I will tell you that in more than 50 per cent of the cases, if a choice was given to the respondent, it would be the complainant that asked for a confidential forum for purposes of the review.

The reason we do it, in most instances, is as follows: The type of complaint we get in front of our board is usually of a highly personal nature. It can involve anything from suicide, psychiatric problems or family problems to a number of other items. You must remember that our reviews are not hearings or a trial but simply held to adduce whether or not there is evidence for that purpose. If these reviews are held in public, it may well prejudice what can be done down the line. That is number one.

Number two has to do with the feelings of the complainant involved. The types of things they would want to discuss if they thought it would be a public discussion would be severely limited.

Three, the amount of information the board could adduce through its questioning in order to determine the effectiveness of the college's role would, in our opinion, in many cases be minimized as a result of the public forum. Our job, first and foremost, is to find out whether or not the complaints committee did a proper job. We feel we should do that job in whatever forum we feel it can best be done.

We recognize the other side and for that reason, we insist so strongly that we are prepared to go to court, as we did, for our right to put it into the public forum when we feel there is a clear public interest here in terms of the merits of the substance of the complaint. You still have to take into consideration, in fairness to everybody involved, the personal aspect of the things that come forward that many people do not want a public forum and the ability of the board to adduce information that might not come forth in a public forum.

Mr. Breaugh: At the heart of my problem is that there are two sides to the argument. There is no question about it. It is a delicate piece of business. I think there is a basic unfairness about doing this in camera. I could accept, for example, as courts do, that from time to time a judge will say that he does not want the details of the case reported and he issues an order saying that. If it were the practice of our courts to meet in camera, the public would be outraged. They would be saying: "Maybe in Communist countries you are not allowed to find out what is going on in the courts, but in the free world it is a basic tenet that whenever you sit in judgement the public at least has a chance to observe what is going on there."

I think my problem is that I fall on the other side of that balance. If it were your practice to hold public hearings, or you

were allowed access to it, and if it became your practice occasionally to go in camera, I might be a little more sympathetic to that.

11 a.m.

Mr. Mackenzie: Quite frankly, I would agree with you that a discipline procedure, which is normally held in camera, ought to be open because at that time a charge has been laid and an accusation is made. But in our instance, the charge has not been laid. It is a question of adducing whether or not there is one to make. Again, without going into all the details, this whole business of confidentiality comes into it. My guess is that if we held them on a regular basis in that forum, we would be so hung up in Divisional Court every time a matter came forward that one party or the other felt ought not to be discussed publicly that we would never get our business done.

Mr. Breaugh: One of the other areas I want to get into a little bit this morning is this confidentiality stuff. We have wrestled with that in legislative terms and studied it. It still seems that confidentiality comes into play when the doctor wants it to and does not come into play very often when the patient wants it to.

I know you have had court cases and you have wrestled with it for years. I am still not very happy that we have arrived at a position where people have a legal right that is pretty clear that they can see their medical records and make use of them. I know the medical argument is that the public will not understand what is contained in medical records or that there is a doctor-patient relationship here or that the patient really should not know. There is a heavy argument on that side of the coin, which I am aware of.

But I am still unhappy with the situation that is practised by your board, for example, around medical records and I would like to hear your comments on that.

Mr. Mackenzie: I would be glad to comment. Before I do, I should go back to say one thing that has been brought to my attention. I should have told you that the matter of the right of the board to hold its meetings in public is still before the courts. The court did find that we are able to do that and that is now being appealed.

I wonder if you can just put your question on confidentiality into a nutshell.

Mr. Breaugh: In a nutshell I think the confidentiality is really used as a hammer, by the professions for the most part, and as an advantage for them. Whenever they do not want things released, they plead that it should be confidential material. The patient should not know and the public should not know; only the profession should know. I am somewhat concerned that it is not really being used to protect the patient; it really is being used to protect the profession. That concerns me.

Mr. Mackenzie: I can only answer in the context of the board. The board has an underlying philosophy that the complainants should have access to their records when they need those records in order to do what they have to do before our board.

We are concerned about becoming a vehicle for access to records, notwithstanding what our purpose is. For instance, there is the Public Hospitals Act, the Coroners Act, the Mental Health Act and so on, all of which have their own legislative requirements concerning how or whether you can get the record. Our board gets those records by virtue of their being in front of the complaints committee, and we want to safeguard as much as possible our board from being a way around all those other acts so that the only reason someone comes before us is not for a complaint at all but to get records.

That having been said, it would be lovely to be able to say in every case: "Here is the record. Go out, read it, come back and let us hear your complaint." The problem with this is that, first of all, I would guess that a high percentage of our cases are third-party complaints. A relative number of our cases are complaints in which other people are involved in those records--that is, family sessions with psychiatrists and that type of thing--where other people's privacy is an issue in relation to the rights of the individual before us.

For that reason, I think it is important that there be a discretionary power so that those rights can also be protected. But in exercising its discretion the board, especially since Stumbillich, does release any records it believes the patient needs to state his complaint, and that includes almost without exception the hospital records.

Mr. Breaugh: There is the nub of my argument. You release any records you believe ought to be put forward. I think what angers me a lot is that even after Krever's report it still is true that if a patient wants to see a medical record, it is not easy. Sometimes it can be done, but it is not easy. If the compensation board wants to see a medical report, it can. If an employer wants to see a medical report, that does not happen quite as easily as it did a few years ago, but it still happens.

It angers me a great deal that when you talk to hospitals and doctors and all those people who have these reports, they get downright righteous about how they are protecting the patients. Yet every once in a while I find out that the medical records, those sacred, confidential documents, are floating around some parking lot in downtown Toronto because the garbagemen did not pick them up the right way.

Mr. Mackenzie: That is my point. I say we believe what we believe, because I believe the moment you remove from the board its right to make a choice, in other words, its discretionary power, you place in danger the rights of others. I say "we" because it is before us.

If somebody does not look at those documents and exercise a discretionary decision as to what is fair to release and what might be unfair to others to release, you run into the problem in reverse. In principle, it would be nice to be arbitrary about it, but you would just be stepping on somebody else's toes. The documents we get are not pure medical files on Mr. Jones. They often include other things. You have to go through them and pick out the ones that relate specifically to him.

Mr. Breaugh: That is precisely it. You and I may disagree, but that is where I believe the argument hangs. I remain to be convinced that you have any great power or should have any great power to make that decision, that you should decide what is a pertinent medical record that ought to be released and that the patient, who never gets to see it, cannot make that decision. I think that is my problem with you there.

Let me go to a couple of other areas. One of the things that concerns me a little bit is that every once in a while, we read in the newspaper about how certain people got disciplined by one of the colleges. You could almost believe with doctors and dentists and other such professional, as long as there is no sex in the dentist's chair, everything is all right. That is a no-no, but the impression that is left is that people are disciplined for moral reasons, but it is rare for medical reasons.

Mr. Mackenzie: I disagree with you on that statistically.

Mr. Breaugh: Statistically you would. Maybe it is just that the old newspapers like to write the juicy stuff.

Mr. Mackenzie: Why not? In that business I understand that.

Very often the cases that come before our board are matters that are quite correctly nonmedical in the technical sense. They are matters of communication and matters of consent and, in rare instances, they are matters of promiscuity, but we have a large number of cases concerning doctors that are very medical in their content. It is for that reason that the act provides the board with an ability to consult expert medical people when we need to come to conclusions on the information before us. The board takes advantage of that provision of the act quite often.

Mr. Breaugh: You will be aware, of course, that a great deal has been written about improper actions by various professionals, such as pharmacists and doctors who hand out drugs pretty freely. Is the board in a position to comment on medical changes in the mores of medical practitioners? Do you do that?

Mr. Mackenzie: The board does not have a legislated function to do that. Often in the reasons accompanying its decisions, when the board sees something either in the way of a trend or in terms of an individual that is worthy of comment, it will comment. Perhaps more important, the board prepares an annual report to the minister which is tabled in the Legislature. We use that report from time to time to bring to the attention of the minister and the Legislature trends and concerns we have seen from a number of isolated cases.

11:10 a.m.

For example, the board had in 1983 a number of complaints that involved practitioners over the age of 80. Without prejudicing anybody's right to practise, the board felt it would be wise to consider monitoring such people on an annual basis, just as you monitor the right of a person over 80 to drive in this province, not because it has found any fault with any of the physicians involved, but because of the sum total of what it saw before. The board made that recommendation in its annual report.

From time to time we see certain trends and things we will bring to the attention of the minister through our annual report.

Mr. Breaugh: One thing that concerns me is I do not think the public is aware of the power of medical practitioners to--there is no way to say this delicately--get around the laws and accepted practices of the land.

For example, if the government of Canada decides a drug is not safe enough to be used broadly, it will not put it on the prescribed list. There are lots of interesting arguments about how it makes the list and all that, but if a medical practitioner decides, "I want to use that drug," he can do so. It happens quite regularly.

Mr. Mackenzie: I cannot comment on that. I do not know.

Mr. Breaugh: What about the basic power of a professional person like a doctor to step outside established practices? Do you get regular complaints, for example, that a drug that is not approved in Canada was used on a patient?

Mr. Mackenzie: Certainly not in that context. If a member was practising outside the laws of the province--

Mr. Breaugh: That is the point. They are not outside the laws of the province at all.

Mr. Mackenzie: If they are breaking the law in any way, which I thought you--

Mr. Breaugh: They are not.

Mr. Mackenzie: Then that would not be grounds for professional misconduct, but if they were, that would be brought before us.

Mr. Breaugh: To give you a concrete example, there is a drug called Depo-Provera. When I first had it brought to my attention, I had never heard of it. Then I found it is the subject of a raging controversy around the world and I read some of the medical material on it. I checked to see whether it was approved for use in Canada and it turns out it is not, but I found out it was being used regularly in provincial institutions for the mentally retarded.

One of the first things that crossed my mind was, how can a drug that is this controversial, and not approved in Canada, be used in our provincial institutions? Then I found out, of course, it is being used under medical supervision. A doctor can prescribe it. It is an amazing drug that is used in our institutions for the mentally retarded.

Mr. Mackenzie: I simply cannot comment. It is totally outside our jurisdiction.

Mr. Breaugh: Has no one ever complained to you that, in a way, here is the law for the world or Canada, but if the medical profession chooses to use the drug and say it is for experimental uses or whatever, the physician can do that on his or her own?

Mr. Mackenzie: We have never had a complaint of that nature.

Mr. Breaugh: That is interesting.

I wanted to touch on one other area and then I will leave you alone for a while. You seem to be affected from time to time by decisions made in various courts. You quoted the example of confidentiality. Do you think it is time that was clarified, or are you satisfied you will continue to operate the way you want to until such time as a court decides you cannot? Should we attempt to go at that and decide to make recommendations to clarify what should be confidential or not?

Mr. Mackenzie: You are talking confidentiality now.

Mr. Breaugh: Yes.

Mr. Mackenzie: From the board's point of view, it is now satisfied in as much as it believes the court has established its right to release the record.

Mr. Breaugh: To use the example you--

Mr. Mackenzie: If I can just say this, the Stumbillich matter was decided by the Supreme Court of Ontario and we had to make a decision as to whether to seek leave to appeal to the Supreme Court of Canada. After considering the matter very carefully, our board decided not to join the college in that appeal in as much as we believed the decision gave us the discretion we required. Subsequently, leave to appeal was sought by the colleges and denied.

Mr. Breaugh: So from your board's position, you feel there is no need to clarify further your powers of discretion and you are not concerned that someone will challenge these decisions in subsequent litigation and turn that around.

Mr. Mackenzie: I think our position is that the court has interpreted the legislation to the board's satisfaction.

Mr. Breaugh: The way you want it.

Mr. Mackenzie: The way we feel we can live with it, yes.

Mr. Chairman: Can I get a clarification on holding hearings in camera and so on? I have a bit of a conflict in my mind; maybe you can resolve it.

In your 1983 annual report you are talking about the release of decisions. First, you refer to the complaint reviews.

Mr. Mackenzie: On page 6?

Mr. Chairman: Yes, page 6. In the last part of that, you say, "Registration hearings are open to the public and the decisions are released in their entirety."

Mr. Mackenzie: As a result of one of the court actions--and I am not sure whether it was Yuz or Stumbillich--the board has subsequently been advised by counsel that we are acting contrary to the legislation by holding registration hearings in public, so they are now private. You will find a correction to that in our next annual report.

Mr. Chairman: All right, that explains it. I was reading section 11, subsection 11(6) and section 12, and I was getting a conflict between your statement and what I see in the act.

Mr. Mackenzie: That is correct, and that is why we no longer hold them in public.

Mr. Chairman: Fine. Thank you.

Mr. Mancini: Mr. Chairman, I have a few questions to place before the people making the presentation here today.

I thought I heard you say earlier something about a watchdog watching the watchdog. I believe you were referring to the Ombudsman reviewing your decisions.

Mr. Mackenzie: Yes.

Mr. Mancini: Do you have a problem with that?

Mr. Mackenzie: Just what I said to Mr. Watson when he asked me the question. The board was brought into being before the Ombudsman Act, and at that time it was brought in for the purpose of protecting the public interest in relation to self-governing colleges. The board's position is that with the Ombudsman also in on that procedure now you have a duplication of checks, and one must ask the question of when that becomes inefficient.

Mr. Mancini: You are aware, of course, that the Workers' Compensation Board was also instituted before the Ombudsman's office was instituted, and the Ombudsman spends a great deal of time reviewing the decisions made by that board. You are aware, of course, that there are probably hundreds of agencies and different ministry departments that were in existence before the Ombudsman was, and his office also has the right to review their decisions. You are aware of that?

Mr. Mackenzie: Absolutely, and the difference to some degree is that if you take, for instance, the Workers' Compensation Board, decisions are made at that level that are government decisions; either you will get compensation or you will not, and that is a matter of appeal to the Ombudsman. But our process is in itself an appeal, so what you are talking about in our case is an appeal from an appeal as opposed to an appeal from an original decision. That is the difference.

Mr. Mancini: I think you may not quite have it correct, because there are two or three levels of appeal in the Workers' Compensation Board.

Mr. Mackenzie: Yes, I understand that.

Mr. Mancini: A person on either side of the issue can appeal.

Mr. Mackenzie: But it is still within the board. In other words, it is not an outside body having an appeal function against the Workers' Compensation Board; it is all an internal process, which then goes directly from there to the Ombudsman. The difference is that in this case there is an external process, after which there is a second appeal.

Mr. Mancini: Not to belabour the issue, but the appeals tribunal at the board likes to consider itself outside of the general operations of the board.

Mr. Mackenzie: Yes, I understand that, but it is still part of the WCB.

11:20 a.m.

Mr. Mancini: In that way it is able to justify what it perceives to be the fairness of its decisions.

I do not want to get into a debate on whether the Office of the Ombudsman is relevant, but I certainly have no objection to its reviewing any decision your agency has made or will make in the future.

I want to ask some specific questions about the complaints. I see on table 1 of the annual report you deal with the complaint review decisions issued by the colleges. I note that a large number, 61 complaints, involve the medical profession, and I wonder if you could give us--I am not sure if I should use this word--the typical appeal that you hear. Is it mostly to do with a personal problem between a patient and the doctor, or is it to do with some type of malpractice or some type of unhappiness with the way surgery or prescribed medication has turned out?

Mr. Mackenzie: It is always unhappiness in the sense that they are dissatisfied with something that is happening.

Mr. Mancini: Are they unhappy that the doctor did not visit them once a day or are they unhappy he put them on drugs that were later found to be inappropriate?

Mr. Mackenzie: Let me try. I think it is almost impossible to categorize them. We get a number of complaints from people who have lost a member of their family and are having a terribly difficult personal time accepting that death and have to investigate every possible cause as part of the process of accepting that death.

Mr. Mancini: Is that the majority of your complaints?

Mr. Mackenzie: No, that would be a part. We get another group which is a less than perfect result in a surgical or a treatment matter. We often have the problem where people look at medicine as a perfect science--and, of course, you and I know that is not so--so you get a relatively large number of complaints based around results that were not the results that were expected.

Our job is to determine whether or not the results were on the basis of medicine being an imperfect science or because of some lack of professionalism on the part of the practitioner.

There is a group of complaints that do not directly relate to medicine, such as whether or not there was informed consent, a full understanding of the procedure that was going to take place, or whether psychiatrists properly found a person to be a danger to himself or to others with respect to enforced incarceration. Those kinds of issues are difficult to put in boxes. I would say we get a relatively diverse type of complaint.

Mr. Mancini: When I look at the disposition of your complaints, are these in percentage figures--

Mr. Mackenzie: Yes.

Mr. Mancini: They are not actual numbers?

Mr. Mackenzie: No.

Mr. Mancini: So we really do not have the actual numbers?

Mr. Mackenzie: I can give you actual numbers.

Mr. Mancini: Yes, that would be helpful. Let us work with the chart we have in front of us for 1983.

Mr. Mackenzie: Okay, in 1983 we received a total of 132 cases, of which 96 were complaints and 32 were registration matters.

Mr. Mancini: Let us deal with the complaints for the time being.

Mr. Mackenzie: Okay.

Mr. Mancini: Of those 96 cases, 80 per cent were confirmed decisions made by the actual governing bodies of the particular professions.

Mr. Mackenzie: That is a little bit of apples and oranges, but that figure is probably not far off.

Mr. Mancini: Do you have a breakdown as to what happened in those cases? How many of the 80 per cent were admonishments to the profession or upheld the view that the profession was correct?

Mr. Mackenzie: In the matters we confirmed, which would be between 80 and 85 per cent, none were admonished. We simply confirmed the decision of the complaints committee. We agreed with the complaints committee that there was no fault.

On the 15 to 20 per cent that were sent back, it would vary between sending them to discipline or making minor or major criticisms of the investigation of the college and/or the conduct of the practitioner. Some would go to discipline, some would go back for admonishment and some would go simply with recommendations to the committee.

I repeat that statistic has to be taken in the light of the board's function as an appeal body and not a court of first resort.

Mr. Mancini: I want to make sure I understand this clearly. When you decide on admonishment, you refer it back.

Mr. Mackenzie: We refer it back to the college. The college is self-governing and we can either require or recommend, depending on the circumstances, that the complaints committee do whatever it has legislatively in its power to do. It can administer light admonishments--

Mr. Mancini: Let us get down to the nuts and bolts of this. Looking at the figures, we have 20 per cent where we send the decisions back to the governing bodies for admonishment, further investigation, disciplinary hearings, etc. What types of disciplinary actions have been taken in the cases where you have suggested or asked the governing bodies for admonishment?

Mr. Mackenzie: The board has rarely had a situation where its recommendations were not complied with, and to my knowledge has never had a circumstance where its requirements were not complied with.

Mr. Mancini: That is the answer to one part. What type of admonishments would be suggested by the governing body when they have gone through the procedures of the first hearing, have a hearing before you and you conclude admonishment is absolutely required? Is there a suspension of licence?

Mr. Mackenzie: It would depend entirely on the situation. I can give you an example if that would help.

Mr. Mancini: Of the 96 cases you heard--I am trying to figure this out quickly in my head--I believe there were probably six to eight for which you actually required admonishment, so there is not a lot to choose from.

Mr. Mackenzie: The fact remains that it would differ in every instance.

Mr. Mancini: Give us some examples.

11:30 a.m.

Mr. Mackenzie: If you are asking me what type of admonishment you would give, an example would be that if, having heard from the complainant, we looked at the documentation before the complaints committee and agreed the doctor did nothing for which he could be charged with professional misconduct, but learned or came to the conclusion as a result of the review that his communication with the patient was less than might have been desired, we would find that was not grounds for a charge of professional misconduct, but in the public interest might be something that should be brought to the attention of the doctor in a relatively formal way.

We might, therefore, return it to the complaints committee of the college and advise it to admonish or caution Dr. Jones to review his communication procedures with patients under certain circumstances, or that type of thing, but it would be individual. It would not be sending it back and saying, "Please slap his wrist." There would be a specific purpose for doing so and that purpose would be spelled out.

Mr. Mancini: Getting back to my question, as I said earlier, if my calculations are correct, it appears there were six or eight circumstances in 1983 where you sent word back to the governing bodies that admonishment was necessary. Could you please inform us what type of disciplinary action was taken in each of those cases?

Mr. Mackenzie: All I can tell you, sir, is, to my knowledge, wherever we asked for admonishment, it was administered.

Mr. Mancini: Excuse me. I do not think you are purposely evading my question. Either you do not understand it or you may not have the information in front of you. I will try to do a better job of asking the question. I would like this committee to know the recommendations made by your board in 1983 for the six or eight cases where you required admonishment.

Mr. Mackenzie: I do not have them with me, sir.

Mr. Mancini: I want to put a request before the committee, Mr. Chairman, that we receive that information. I believe it is very important for us to know what type of discipline is actually being asked for when the case is--

Mr. Mackenzie: Are you talking about referrals to discipline committees, sir?

Mr. Mancini: I am talking about the disposition of complaints in table I, headed Health Disciplines Board: Complaint Review Decisions Issued by College. We went through all the figures earlier.

Mr. Mackenzie: In discipline hearings, for instance, there are conclusions to those. All I can say is in each instance the decision would have been sent back to require the committee to do something, to advise the doctor to be more careful about his bedside manner, his manner of obtaining consent or whatever the merit of the complaint was. In each instance, to my knowledge, the recommendation was met by the college.

Mr. Mancini: Mr. Chairman, with all due respect, I do not consider that to be a full answer to my question.

Mr. Chairman: Exactly what are you requesting further?

Mr. Mancini: I would like to know in these six or eight circumstances what type of discipline was asked for, whether it was that Dr. So-and-so improve his or her bedside manner, whether there should be more communication or whether a more serious admonishment was asked for. I would like to know specifically what was requested. What was actually sent back to the college?

Mr. Chairman: Mr. Mackenzie, we will be breaking from 12 until two. Is there any problem with gathering up the six or eight requests to the specific colleges in that two-hour period?

Mr. Mackenzie: I am certainly not trying to be unco-operative, but they are not categorized together. We would have to go through all the decisions that were made that year.

Mr. Mancini: There were only 96.

Mr. Mackenzie: It would be somewhat difficult to read 96 decisions in an hour.

Mr. Mancini: I am not asking you to read them all.

Mr. Breaugh: We simply ask you to provide the committee with the documents you have on those six cases before the committee writes its report.

Mr. Mackenzie: I will be happy to co-operate with that.

Mr. Chairman: That will be over the next week?

Mr. Mackenzie: We can probably have them to you later today.

Mr. Chairman: That would be excellent.

Mr. Mackenzie: Or tomorrow, whenever, as quickly as we can.

Mr. Chairman: Mr. Mancini, if they can come up with four or five or six and get them to us this afternoon, would that be all right?

Mr. Mancini: Yes, that would be a partial answer, but there are so few, I think it is necessary for the committee to see all of them in order to make a reasonable judgement.

Mr. Mackenzie: Mr. Chairman, it would be my proposal that the decisions we give you would be the ones that have the statistics crossed out, the names, places, institutions. Is that a problem with this committee?

Mr. Chairman: I do not think that is a problem. How do committee members feel about that? I see Mr. Breaugh grinning.

Mr. Breaugh: It is an unusual request to have a legislative committee censured before it even gets the documents.

Mr. Mancini: Why would you request that?

Mr. Mackenzie: Because without knowing what I am talking about, they may be matters that ought properly to remain confidential.

Mr. Breaugh: Normally we would make that decision, as opposed to people providing us with the information.

Mr. Chairman: We do have the provision to sit in camera here as well.

Mr. Cureatz: Since Mr. Mackenzie is so co-operative in giving the material to us, it would be nice if the committee could be co-operative back. Let us examine the material and, at that time, we could examine it in camera.

Mr. Mancini: Let me put the question in a different way. After we see the confidential information, if we request that it not be confidential, is there a problem?

Mr. Mackenzie: I am going to have to consult counsel on this one, if I may.

Mr. Chairman: Perhaps you could bring with you two sets, one blacked out and the other not blacked out and provide the blacked-out set first.

Mr. Mackenzie: It seems to me if the intent of seeing these decisions is, as I understand it to be, to see the form of the request for admonishment, or whatever, that will be very clear in those decisions, blacked out or otherwise.

Mr. Mancini: But as a committee we should have some leeway to make our own decisions down the road. I understand we are asking for specific information but, as a legislative committee, we should have the legislative authority to ask for more information as we go along on these hearings.

Mr. Chairman: Then my previous suggestion is, if you are making photocopies, make two sets, one with the information blacked out and the other still in your briefcase not blacked out and you can provide us with the first ones first. Then if any committee member felt there was any reason to go beyond that, you would have the information in your briefcase.

Mr. Mackenzie: May I consult with counsel?

Mr. Chairman: Certainly.

Mr. Breaugh: I may stir it up by putting on the record that this committee has the right to see the information in an unvetted form and it would be at our discretion whether we would publish any names. I have no intention of publishing anyone's name or to do anything other than take a look at it, but I think it is a reasonable request on the part of the committee to ask to see the cases.

We assume some obligations when we get it and I think we are all big boys and understand that. I do not see a problem here. We are simply asking to see, not even all of the cases that were reviewed by the board, but to see a number of cases that were reviewed by the board and referred back to the colleges. That seems pretty reasonable.

We ought to be able to see the cases in their original form without anyone vetting them for us. I believe we are all in line here. The next logical step that I would like to see is what the colleges did.

11:40 a.m.

Mr. Mancini: Just one step at a time, Mr. Breaugh.

Mr. Breaugh: I do not see anything unreasonable in the request for it, one step at a time.

Mr. Cureatz: Yes, but what is the point? The point we are trying to look at--

Mr. Breaugh: The point is I do not really ask for the documents where the person giving me the documents has the opportunity to vet them before he gives them to me.

Mr. Cureatz: Yes, but the point is what is the vetting doing?

Mr. Breaugh: I do not know. I would be a little happier if I did know.

Mr. Cureatz: I am suggesting all it is doing is removing those people's names. What we are looking for is the substance of the decision, not for the people's names. I am not so happy with what you are proposing. I would rather have the documents; look at the vetting and we can see what the particular case is all about in terms of the substance.

Mr. Chairman: Can we go back to my suggestion of having the two, the expurgated and the unexpurgated copies, one of each?

Mr. Breaugh: It truly is a wonder to behold.

Mr. Chairman: Full of compromise, Mr. Breaugh. Mr. Mancini, do you want to carry on?

Mr. Mancini: It was suggested that we could probably get information on the matters listed as further investigation under the disposition of complaints and discipline hearings, and with comments. That, in my quick calculation, would add up to maybe another 10 pieces of information. Is it a problem obtaining that information?

Mr. Mackenzie: No, sir.

Mr. Mancini: Thank you. We will get two copies of that too, I understand.

Mr. Mackenzie: Yes, sir.

Mr. Mancini: Let us stick with the medical profession, stick with doctors, because they give you the biggest work load and are the most visible part of the medical profession for many different reasons at this time. I was not surprised but I am concerned that, in most instances, doctors are represented by counsel and the complainants are not represented by counsel. We were informed that you operate these hearings in a very open, cordial, unstructured manner, trying to elicit all types of information, etc.

Do you find that the doctors who are represented by counsel may have an intimidating factor, they may be intimidating at these hearings. What is their actual role at these hearings? Does the doctor turn, the way you did a few minutes earlier, to counsel and say, "Can we get this or should we say this or not?" I guess there is no cross-examination by the doctor's lawyer in regard to the patient, is that correct?

Mr. Mackenzie: That is correct now, yes.

Mr. Mancini: Was it not correct earlier?

Mr. Mackenzie: No, at one point in the board's procedures we had cross-examination and, as I said earlier, we have changed that procedure.

Mr. Mancini: When was that changed?

Mr. Mackenzie: Within the last four months, as a result of the Stumbillich decision. If you recall, earlier this morning I said the courts found we were holding a type of hearing because of the procedures that we allowed the complainant and respondent. We have reverted closer to the pure review process contemplated under subsection 8(2) of the act, which does not allow for cross-examination.

Mr. Mancini: I am surprised that you actually allowed it earlier on and would have to be told by someone else not to allow it, when we know full well that an ordinary citizen coming in before the board without counsel has absolutely no chance in front of a sharp lawyer. Anyway, that is not the point.

The point I want to dwell on here is the role of the counsel at the hearing now.

Mr. Mackenzie: The role of counsel is that, as stipulated in the act, the complainant and the respondent are allowed to state their complaint and give their answer in person, in writing or through an agent. Both sides are entitled to be represented by counsel.

The counsel, whether he be for the complainant or respondent before our board, is encouraged to let the complainant do the speaking with respect to the complaint and the respondent to speak directly to the board with respect to his answer.

Counsel, of course, has full right to question his client and to represent his client in any way he thinks fair. The rights of the parties are protected by the chairman. Because a lawyer is on one side and not the other, it is part of my function to see that both parties have a full and fair review before the board.

The second part of my answer is that the people involved, the complainant and the respondent, were brought there in the first place by a serious concern. In the case of the respondent, the possible outcome could be a hearing that would result in a cancellation of his licence. He is fully entitled to proper representation under those circumstances.

Mr. Mancini: No one would want to deny anyone full and proper representation. I am sorry you may have concluded I suggested that. My question deals directly with the hearings you hold and the type of atmosphere that may be created by one party being represented by a very good lawyer and another individual who is not particularly informed about the governmental process or your board being there all by himself.

The setup of such a situation makes the whole hearing somewhat unbalanced. If you are telling me you go out of your way to try to counter that, I guess we have to accept your answer. However, I do not for a moment believe that a person without counsel is as equally represented as a person with counsel. That leads me to my next question.

Does the Ontario Medical Association pay for counsel for the doctors who appear before your board or is it paid by the individual doctors?

Mr. Mackenzie: I have no idea.

Mr. Mancini: Could we obtain that, Mr. Chairman?

Mr. Chairman: Does the board have any evidence in its files as to where the solicitor's account goes or who pays it?

Mr. Mackenzie: Because one firm does a large proportion of representation of physicians, my guess would be it is done through insurance policies, malpractice insurance or whatever it is, as opposed to a direct payment. I would guess it is not the Ontario Medical Association.

Mr. Chairman: Have you any information in your files to substantiate that one way or the other?

Mr. Mackenzie: No. From the board's position, they are entitled to counsel and so is the complainant. We do not have any function, need or desire to ask where the lawyers come from.

Mr. Breaugh: I wonder whether John Eichmanis could check with the OMA and the college to see which is the case.

Mr. Chairman: Are you thinking about over the noon hour?

Mr. Breaugh: It does not have to be done that quickly; whenever he has time.

Mr. Mancini: That was my original request, Mr. Chairman.

What is the name of the one firm that usually does the representation?

Mr. Mackenzie: One firm that is often before us is McCarthy and McCarthy.

Mr. Mancini: Are you telling us you usually see the same lawyers in front of your board?

Mr. Mackenzie: McCarthy and McCarthy is quite a large firm. We see a number of lawyers from that firm.

Mr. Mancini: I did not ask that. I am asking you whether, on the basis of some of these 96 cases, you usually see the same lawyers in front of your board.

Mr. Mackenzie: I cannot answer that other than to say--

Mr. Mancini: Are there five, six, half a dozen or eight?

Mr. Mackenzie: Maybe a dozen, maybe two dozen.

Mr. Mancini: Are there any who appear more than others?

Mr. Mackenzie: Not particularly.

11:50 a.m.

Mr. Mancini: Before I get into that I want to get back to what you said concerning people in the medical profession who have their lawyers there because an outcome may question their ability to practise, and I fully respect that. You mentioned the word "malpractice," whereas initially that word was not used very often. I believe initially you were stressing the fact that most of your cases really were not for malpractice but for bedside manners and for proper communications between doctor and patient.

So we are seeing now, actually, by the use of this word, that a particular firm that we believe now goes before your board often and is an expert in the way your board works is representing these doctors. I am not saying it should or should not; I am trying to put everything into proper perspective, that it does in fact represent any doctor who may be accused of one thing or another, that in fact it is there to protect its clients and to ensure that if a case does go to civil court later, there is some type of record that it can use.

That relates back to some of the concerns and issues that were raised by Mr. Breaugh. You suggested that, "Yes, when all our hearings are over, if someone is not happy, we will go to civil court and fight it out there and everybody will have the best counsel available." But given the fact that you people make decisions and there are lawyers schooled in how your board operates and how these situations take place, in my view, rightly or wrongly, it certainly appears to me that this would give one side some type of advantage.

Mr. Mackenzie: Am I going to be allowed to answer that question, Mr. Chairman?

Mr. Mancini: That was more of a statement than a question.

Interjections.

Mr. Chairman: Go ahead, Mr. Mackenzie.

Mr. Mackenzie: Mr. Chairman, I would like to say, first of all, what I intended to say earlier today was not that we do not deal with cases in which you could use the word "malpractice." As a matter of fact, I believe I said it was a fairly large part of our case load and it is why the board has in its legislation the ability to consult an expert opinion. Malpractice is not the only reason for which a doctor can be charged with professional misconduct, but it is one of them and it is certainly a large area of the matters we deal with.

With respect to the purpose of the lawyers being present, I would say that the gentleman is right to a degree. Indeed, while I said earlier that the complainants were not always represented, they are represented on occasion; and in most cases where they are represented, it is because of the litigious intent on their behalf.

Indeed, the board serves a function on behalf of the complainant in many instances to determine whether or not a litigious action is going to take place. In those cases the complainants are equally well represented; they have lawyers there who are doing exactly the type of thing that was suggested is being done on behalf of the doctors. That happens on many occasions before the board.

Mr. Mancini: Recently the Grange commission finished a very lengthy hearing on the unfortunate situation at the Hospital for Sick Children, and it appeared from start to finish that the people who were put under suspicion were probably the people in the medical profession who were viewed as having the least power in the hospital system: the nurses, not the doctors and/or the administration. That in itself has always concerned me.

I want to ask you whether or not you had any role whatsoever in the situation that took place at the Hospital for Sick Children in any of the deaths that occurred there.

Mr. Mackenzie: None whatsoever.

Mr. Mancini: No complaints were brought?

Mr. Mackenzie: No.

Mr. Mancini: Probably because the emphasis had been placed on the nurses. Were you surprised that no complaints were brought before the college of physicians?

Mr. Mackenzie: No.

Mr. Mancini: You were not surprised?

Mr. Mackenzie: I never put my mind to it.

Mr. Mancini: I see. Have you had a situation similar to that brought before you where there was an unexpected death?

Mr. Mackenzie: Similar to a digoxin death?

Mr. Mancini: Similar to the whole situation where there was the unexpected death of a baby.

Mr. Mackenzie: No, sir. The board still has before it a case having to do with a death at the Hospital for Sick Children. My understanding is that it is an older child. The board has not dealt with it and I have no idea of the merits.

Mr. Mancini: I see. That is all for now, Mr. Chairman.

Mr. Chairman: Thank you, Mr. Mackenzie. Since it is two or three minutes to 12, rather than go on to the next member for questioning, maybe we can knock off until two o'clock. That may give you a chance to gather up some of the information requested.

The committee recessed at 11:56 a.m.

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STANDING COMMITTEE ON PROCEDURAL AFFAIRS

REVIEW OF AGENCIES, BOARDS AND COMMISSIONS:
HEALTH DISCIPLINES BOARD

WEDNESDAY, FEBRUARY 20, 1985

Afternoon sitting



STANDING COMMITTEE ON PROCEDURAL AFFAIRS

CHAIRMAN: Treleaven, R. L. (Oxford PC)

VICE-CHAIRMAN: Watson, A. N. (Chatham-Kent PC)

Breaugh, M. J. (Oshawa NDP)

Charlton, B. A. (Hamilton Mountain NDP)

Cureatz, S. L., (Durham East PC)

Edighoffer, H. A. (Perth L)

Kells, M. C. (Humber PC)

Mancini, R. (Essex South L)

McNeil, R. K. (Elgin PC)

Miller, G. I. (Haldimand-Norfolk L)

Rotenberg, D. (Wilson Heights PC)

Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Substitutions:

Hennessy, M. (Fort William PC) for Hon. Mr. Kells

Pollock, J. (Hastings-Peterborough PC) for Hon. Mr. Rotenberg

Clerk: Forsyth, S.

Staff:

Eichmanis, J., Research Officer, Legislative Research Service

From the Health Disciplines Board:

Fraser, R., Legal Counsel; with Fraser and Beattie

Mackenzie, K. N., Chairman

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON PROCEDURAL AFFAIRS

Wednesday, February 20, 1985

The committee resumed at 2:10 p.m. in room 228.

AGENCIES, BOARDS AND COMMISSIONS
(continued)

HEALTH DISCIPLINES BOARD

Mr. Chairman: We have a quorum present. Mr. Mackenzie, Mr. Mancini has asked that we finish this matter of what I call these samples of epistles of yours back to the college involved.

Mr. Mackenzie: Mr. Chairman, I have two problems. One is administrative. Over the lunch hour the staff of the secretariat has not been able to pull the total number of decisions requested. They are still working at it and expect to have most of what is required here within the half hour.

I have some other comments as a result of the request. I do not know whether you want me to make those now or when the decisions arrive.

Mr. Chairman: Shall we go on with questioning and deal with those later? What is the committee's wish? Fine. Carry on with questioning.

Mr. Villeneuve: I see you handle complaints from pharmacies, or on behalf of people who are unhappy with drugs they have received or whatever. Would this have anything to do with no-name brand drugs? Just exactly what are those complaints?

Mr. Mackenzie: We do not get too many in relation to pharmacies, but the thrust would more often be alleged improper prescription filling. Indeed, we recently had a complaint in which a consumer was concerned because he had been given an out-of-date prescription, and when it was returned, no refund was given. We have never had any no-name complaints before us as such.

Mr. Villeneuve: There is a bit of controversy within the pharmaceutical industry itself regarding no-name brands. I believe they have been under some sort of investigation. I just wondered if this was part of some of the complaints against the pharmaceutical people.

Mr. Mackenzie: We have had no complaints of that nature to date.

Mr. Hennessy: I would like to ask a question regarding senior citizens getting drugs. They may have been taking a certain brand when suddenly they are told by the pharmacist it has been changed, to take this as it is just as good. Sometimes the drug

does not agree with them and they want to get the one they had before but they have to pay for it. It is then a different ball game.

I am wondering why the sudden change for senior citizens when it comes to drugs. They are told that it is too expensive and they are switched to something else, but maybe the people cannot take what they are switched to and then they are caught out in left field.

Mr. Mackenzie: I am subject to your direction, Mr. Chairman, but that is a matter that does not come before our board. I think all I can say is that we have never had a matter of that type come before us as a complaint.

Mr. Hennessy: I do not think they would come from Thunder Bay to complain about the drugs, but they come to my office and complain to me and I am just passing it on to you.

Mr. Mackenzie: I appreciate that, but I am not sure what I can say in response because it is outside of our--

Mr. Hennessy: It is different for someone who complains, because in this place you get a medal if you find who you want anyway, so just finding the person, never mind speaking to him, would be an asset.

Mr. Eichmanis: Looking over the acts and the provisions that govern your procedures, I was curious. In some sections of the act there is discussion about hearings and reviews. It is optional in some cases whether you can hold a hearing or a review. For example, subsection 7(1) states, "The board shall conduct such hearings and perform such duties as are assigned to it by or under this or any other act." Then it goes on to talk about hearings and so on. It is not until subsection 8(2) that it talks about reviews.

The impression that is left with me is that, whereas under section 7 I assume all your operations or activities are in the form of hearings, in fact that is not the case because the act then switches gears and talks about reviews. On the surface it appears to be somewhat inconsistent. I would have thought that section 7, which gives the broad general parameters of what you do, would also include that you do reviews, but it does not talk about reviews at all; it only talks about hearings.

There is some confusion in my mind. Do you have an option as to when you can hold a hearing and when you can hold a review?

Mr. Mackenzie: The legislation requires that the board review the decision of the complaints committee, so that in matters of complaints the board holds a review and not a hearing and it is not subject to the same degree of the Statutory Powers Procedure Act.

In matters of registration the appellant has a choice to ask for a review of a decision or a proposed decision of the registration committee, or he can ask for a hearing to review the decision.

If it is a registration review, in that instance alone the board reviews the documentation that was before the registration committee without any parties being present. It simply goes over the documents, reviews them and makes the decision.

In the case of a hearing being requested, then it is a full tribunal under the Statutory Powers Procedure Act. The only requirement for a hearing is under those circumstances and the board has no legislative authority to hold a hearing in relation to complaint reviews.

Mr. Eichmanis: Under the registration procedures, you indicate that the individual has a choice as to whether he wants a review or a hearing. Is that correct?

Mr. Mackenzie: Yes, sir.

Mr. Eichmanis: Does the applicant generally know what the differences are?

Mr. Mackenzie: The colleges involved send a letter of decision or proposed decision to the applicants in which they outline the different procedures that are open to them. Subsection 11(1) says: "Where a registration committee proposes to refuse to grant registration to an applicant, or proposes to attach terms, conditions or limitations to a registration, the registrar on behalf of the committee shall serve notice of the proposal of the committee, together with written reasons therefor on the applicant or registrant, and a copy thereof to the board."

2:20 p.m.

Subsection 3 states: "A notice under subsection (1) shall inform the applicant or registrant that he is entitled to a hearing by the board or to a review by the board of his application...."

Mr. Eichmanis: On the surface one could say this could be simply said, that one is entitled to a hearing or review, without any explanation of what the different procedures involve. Would there be an explanation of the differences to the appellant so he would know?

Mr. Mackenzie: I am not sure there would be. The problem is that it is not before us until an appeal is made. It happens more often in matters of nursing than in medicine, because for whatever reason the largest number of appeals for registration we get is in the nursing profession. In many instances the request for appeal comes from people for whom English is not their first language. When it receives these appeals, one of the functions of the secretariat is to talk to the appellants to make sure they understand what their options are and what will proceed under the basis they have asked for.

For instance, we often get people asking for hearings when they are not in a position to present evidence--they are in the Philippines or wherever--and what they really want is a review. It

works in reverse as well. We try to to deal with that problem as much as we can when the matter comes to our attention.

Mr. Eichmanis: There is another point I want to raise. Earlier this morning you discussed the question of a complainant who was dissatisfied with going through you, etc., and you said he had the right to go to the courts and seek redress in that way. I understand from the act, under subsection 11(9), that where it is a registration matter the person can appeal directly to the Divisional Court from your decision, whereas under the complaints procedure there is no comparable provision.

Mr. Mackenzie: My understanding is there is nothing that specifically allows it in the act. They can go and have gone by way of judicial review.

Mr. Eichmanis: From the complaints--

Mr. Mackenzie: From the decision of the Health Disciplines Board relating to a complaint matter.

Mr. Eichmanis: Although it is not specifically provided for in the act.

Mr. Mackenzie: That is correct; it is in the rules of civil procedure.

Mr. Edighoffer: Back to the nitty-gritty, the operation of the board; you have seven members.

Mr. Mackenzie: Yes.

Mr. Edighoffer: Do you have to have a quorum of four to sit?

Mr. Mackenzie: A quorum for purposes of reviewing a complaint or hearing a registration is three; a quorum for regular board business is four. Three members of the board can sit on a panel.

Mr. Edighoffer: In the past, have you found that only certain members are available for hearings or are they pretty well spread out amongst the members?

Mr. Mackenzie: The members of the committee are paid a per diem so the attendance is rather good.

Mr. Edighoffer: Are all your hearings held in Toronto?

Mr. Mackenzie: It is our general practice to hold our reviews and hearings in Toronto, but we will hold them outside Toronto under specific circumstances. In the matter of a hearing, there are no witnesses in the review process for instance, but in a registration hearing there may well be witnesses. If a nurse who wishes to call four witnesses lives in Pembroke or Ottawa, the cost could be prohibitive and the board will consider going and

sitting there so the person can bring the people forward. We did that late last year. Under normal circumstances, the board sits in Toronto.

Mr. Edighoffer: From what you have said regarding the hearings, the majority are in camera.

Mr. Mackenzie: Yes.

Mr. Edighoffer: You have also said you do not feel the Ombudsman should have the right to review it. All Ombudsman's reviews are in camera. Why would you not do away with the Health Disciplines Board and just send everything to the Ombudsman?

Mr. Mackenzie: When this became a matter of controversy, my position, personally, was that there is a duplication. It would be up to wiser minds and eyes as to which of the two methods would be more effective with regard to this particular procedure. The only answer I can give you is that the Ombudsman's powers, as you know, do not extend to being able to require anything being done. The Health Disciplines Board has that particular power. The thrust of my argument is not that one is better than the other. It is simply that there are two in place.

Mr. Mancini: You mentioned the members are paid a per diem. Do you have the amounts?

Mr. Mackenzie: Yes. A member of the Health Disciplines Board receives \$110 per day and the vice-chairman \$126 a day.

Mr. Mancini: What does the chairman receive?

Mr. Mackenzie: He is not on a per diem. I believe the chairman receives a half-time salary of \$25,000 a year.

Mr. Mancini: I was looking at your global budget, which is on page 6 of our researcher's report. For 1983-84, it is \$243,000. I am not sure I understood this correctly. Does that include the money from the secretariat for the staff, or is that excluding the staff from the secretariat?

Mr. Eichmanis: It is my understanding it includes the secretariat.

Mr. Mancini: It includes your support staff.

Mr. Mackenzie: That would be my presumption as well.

Mr. Mancini: What would legal fees be for a year?

Mr. Mackenzie: I do not have that information in front of me, but I would guess somewhere between \$65,000 and \$70,000.

Mr. Mancini: Has it been averaging between \$65,000 and \$70,000 per year?

Mr. Mackenzie: The gentleman beside me is the counsel for the board. He informs me that for the 10 months of this year, the fees have been \$50,000.

Mr. Mancini: From \$60,000 to \$70,000 is about right then for 12 months. How do you decide on counsel? Do you have one all the time?

Mr. Mackenzie: The board selected a firm of counsels at its inception.

Mr. Mancini: What is the firm?

Mr. Mackenzie: Fraser and Beatty. Mr. Russell Fraser, who is here with me today, is the board's counsel. It selected that counsel some 10 years ago, has reviewed it from time to time and has the highest confidence in its counsel.

Mr. Mancini: That was not my question. I raise this concern when we have other boards and commissions before us.

Mr. Chairman: Yes, you do.

Mr. Mancini: The chairman was a practising lawyer before he became a member. I am not sure if he is now or not. I have aired my concerns before and I will again. I do not find the practice of using the same firm and/or the same lawyers for a particular government agency for long periods of time to be in the public interest.

I do not say that because I want to question in any way whatsoever the competency of the gentleman who is with you today or the people who represent the other agencies, boards or commissions who come before us. However, when we are spending the public's money, there should be a fair opportunity for people in the profession to have a chance at a particular contract or at least part of it.

2:30 p.m.

We had a situation here last week in which an agency was spending \$150,000 a year for the services of a legal firm. I was surprised it was all going to one firm and had been for a number of years. It is the same with the board of which you are chairman. I am not sure whether we will make a recommendation as to how we feel about this, but as a member of this committee, given the fact there are a lot of good lawyers out there who are struggling because there are not enough clients, it is my view that some of this work should be spread around, with all respect due to your present counsel and certainly with no malice intended.

It is only that I feel, since it is public money, there should be a procedure whereby you make a determined decision to spread some of this work around. I am sure, after a few months or so, people will be brought up to date with what you are doing.

I am not saying you have to do it all at once or you should do something to disrupt the reasonable operation of the board, but it is my view that since it is public money, some of it should be spread around.

I assume you will take this back to your board.

Mr. Mackenzie: Yes, sir.

Mr. Chairman: I point out, Mr. Mancini, for Mr. Mackenzie's benefit, that there will be a report from this committee on its recommendations. Those recommendations may reflect the feelings of one member or all the members or may not reflect what one or two members feel. It is a consensus report.

Mr. Breaugh, do you have a question?

Mr. Breaugh: Yes, I want to check something out. Are you aware three of the associations you deal with made submissions to the committee and put forward some recommendations? Are you aware of those letters?

Mr. Mackenzie: To this committee?

Mr. Breaugh: Yes.

Mr. Mackenzie: No, sir.

Mr. Breaugh: This may be a little unfair, but when we asked Ontario Nurses' Association for their comments, their one point was that there seemed to be lengthy delays in proceedings. They seemed somewhat concerned that you consider a recommendation that, if the registrant has not been notified of the allegations of the complaint and the decision to proceed within 90 days of the complaint or notification being made, then no further action should be taken by the College of Nurses of Ontario. This recommendation eliminates the necessity of applying to the Health Disciplines Board.

Do you agree with that? -

Mr. Mackenzie: I should draw a distinction between the bodies we deal with and the bodies you are talking about. The legislation sets up colleges and the professions also have associations which, in the loosest term, are really the unions of the professions. They are quite distinct from the governing body, which is the college. That is the body with which this board deals.

I take it that what you are speaking to me about is not the College of Nurses of Ontario but the--

Mr. Breaugh: This is the Ontario Nurses' Association.

Mr. Mackenzie: And their recommendation?

Mr. Breaugh: I presume it simply means that, instead of going to the college when the college does not do anything, go

directly to you. I wonder if the clerk could provide the witness with a copy.

Mr. Mackenzie: I think I just got one.

Mr. Breaugh: Okay. It is in the second paragraph.

Mr. Mackenzie: Is this a letter dated January 21, 1985?

Mr. Breaugh: Yes.

Mr. Mackenzie: May I take a moment to read it?

Mr. Breaugh: Sure. While we are at it, would you give him copies of the letters from the Ontario Pharmacists' Association and the Ontario Dental Association?

Mr. Mackenzie: I do not agree with what is in the letter. First, in the 10 years the board has been functioning, I cannot recall a single incident in which we have had to order the colleges to proceed because they did not proceed within the time limit.

Second, the time limit is important. As I mentioned this morning, very often, just to get to the complaint stage, a matter has proceeded for a year or more. While time does put a constraint on people in some ways, the other side of that is, if that time was lengthened before we could act, it is that much longer before the complaint is heard and before the member of the public has an opportunity to dispose of his problem.

Mr. Breaugh: So you are not in agreement with the recommendation from the nurses?

Mr. Mackenzie: No, sir.

Mr. Breaugh: Let us try the one from the pharmacists' association. In essence, it complains that one of your decisions was wrong, I guess; the one having to do with Chedoke-McMaster Hospitals' application for the right to operate an accredited pharmacy. They are saying that this should not have been within your purview. I would imagine that you are going to say it was.

Mr. Mackenzie: May I have a moment to read that?

Mr. Breaugh: Yes.

Mr. Mackenzie: Allow me to attempt to answer this in general terms. This was a matter arising out of the wish of a hospital to be licensed as a pharmacy and a concern by some members of the pharmacy profession that to allow this to happen would be to allow competition that would be unfair.

Without being able to go into the merits at this time, because it happened more than a year ago, my recollection is that the board concluded that the act as it now exists allows the possibility of a pharmacy to be operated by a hospital. This was

not something the pharmacists' association was very pleased about, but we believe it is what the law says.

Mr. Breaugh: Finally, we have a submission from the Ontario Dental Association, which is quite content with it all but does make a recommendation on page 2 that, "if the board had the power to declare a matter purely trivial, frivolous or not made in good faith," you would have the ability to dismiss it. Would you comment on that?

Mr. Mackenzie: Again, may I take a moment to read it?

Mr. Breaugh: I do apologize for foisting these on you. I assumed you had received copies of these.

Mr. Mackenzie: There is no problem as long as you let me look at it.

I agree with this very strongly in principle. My question, however, is how you enforce it and at the same time protect the right of the individual to make a complaint.

The board has about four chronic complainers. We have one series of complaints before us now that includes five complaints, and we have probably had another nine or 10 complaints from the same individual. We have another complainant in the psychiatric vein of whom I would venture to say that it is her life's work to bring complaints to the board.

There would be ample ground in those instances to find the complaints an abuse of the process, and I can assure you there are times when the board would very much like to say so and even do something about it for the sake of the time and money that is expended on trivial matters. The problem, however, is that small matters are not always trivial. There is a matter of judgement that goes into that and it is a fairly sacred trust.

I am not just sure how you would exercise that power. But the bottom line is that yes, the board does have a problem with complaints that are without substance.

Mr. Breaugh: A major problem?

Mr. Mackenzie: I would say larger than minor.

Mr. Breaugh: Again I apologize. I assumed you had these various pieces of correspondence. If on reflection, after you have had a chance to read them for a few days, you want to put something in writing and send it to the committee, we would be happy to receive it.

2:40 p.m.

Mr. Chairman: Are there any other questions before we deal with these sample letters?

Mr. Villeneuve: Just one further one about the Ontario Pharmacists' Association. Did this come to you as a complaint from a private pharmacist that an in-hospital pharmacy was going against the law, as they interpreted it?

Mr. Mackenzie: No, sir. If my memory serves me correctly, it came by way of a registration hearing where a pharmacist, acting on behalf of a hospital, requested a licence to operate a pharmacy within a hospital.

It was a hearing which was before us because the accreditation committee of the Ontario College of Pharmacists did not propose to grant a licence for the purpose of operating this pharmacy. It was appealed by that body to us. Our finding was that in law they had a right to be licensed.

Mr. Villeneuve: Your interpretation of that particular law.

Mr. Mackenzie: That is correct, on the evidence and on the advice from counsel. I might add that matter was a rather controversial matter at the time and was not taken to appeal.

Mr. Villeneuve: It still is very controversial.

Mr. G. I. Miller: Do you mean that the hospital did not appeal the decision?

Mr. Mackenzie: The hospital was quite happy with the decision.

Mr. G. I. Miller: Oh, they wanted the decision not to have the--

Mr. Mackenzie: No. They wanted to be able to operate a pharmacy and our decision allowed that to happen.

Mr. Villeneuve: Pharmacists in my area, which is small-town Ontario, find a great deal of difficulty competing with the likes of that, and I tend to agree with them.

Mr. Mackenzie: I think, sir, it was the finding of our board that for that not to happen, there had to be a change in the existing legislation.

Mr. G. I. Miller: Again, just for the record, I think the West Haldimand General Hospital put a pharmacy in the new wing and working along with existing--it is a small community--they did work that out. They do have a pharmacy within the hospital itself now.

Mr. Villeneuve: Have you got a pharmacist downtown who is not happy?

Mr. G. I. Miller: No. There does not seem to be any dissatisfaction. There was some concern when it was set up, but it seems to be working out.

There are a couple of things I was wondering about the decisions of the Ombudsman and the concern which has been expressed by the board, and role the Ombudsman plays. Do you feel this has been some use to the board? Have some of the recommendations been carried out to improve the workings of the board?

Mr. Mackenzie: I am sorry, sir.

Mr. G. I. Miller: Has the Ombudsman made any recommendations for changes within the board and the operations of the board?

Mr. Mackenzie: No, sir. The only time we have had a disagreement with the Ombudsman had to do with the release of records. It had to do with whether the board was able to release records, and that matter was resolved in the courts.

Mr. G. I. Miller: In favour of whom?

Mr. Mackenzie: It is not that simple, because it was not a matter being resolved between us and the Ombudsman. It came down to the Stumbillich case, where the court said we did have the discretion to release records.

Mr. G. I. Miller: I see there are two decisions that did not support the Health Disciplines Board. Do you recall what those decisions were?

Mr. Mackenzie: Could you refer me to the page?

Mr. G. I. Miller: Page 16 in the annual report.

Mr. Mackenzie: I cannot answer that. One would be the one relating to section 65; that is, the matter of confidentiality. The other was the same issue. It is actually quite a good example of the problems we run into.

It had to do with a psychiatric case where a young man had committed suicide. His father was complaining about the treatment of the son. He was before the board as the complainant and wanted his son's records.

Contained in his son's records were a number of psychiatric documents that related the problem with the son directly to the father, of which the father was not aware. In that instance, the board exercised its discretion that it was not in the best interests of the complainant to release those records and did not do so.

I believe the Ombudsman did not agree with that decision.

Mr. Chairman: Just to follow that up: if the Ombudsman did not agree with that, were the records ever disclosed?

Mr. Mackenzie: No, sir. This happened some years ago. I do not think the Ombudsman disagreed in the black-and-white terms I just suggested. I think in his report he suggested it might have been done another way, or that something else might have happened, but there was no recommendation either to us or to the Legislature.

Mr. Chairman: Thank you. That seems to take care of the questions except for the issue at hand about these forms or samples of these letters or documents of yours addressed back to the individual colleges.

Mr. Mackenzie: Mr. Chairman, our people are here. Would you be good enough to give us a five-minute recess so I could find out what the status is?

Mr. Chairman: Sure. That is fine.

The committee recessed at 2:47 p.m.

3:10 p.m.

Mr. Chairman: We will reconvene. The flexible five minutes has elapsed.

Mr. Mancini, perhaps you would like to review your request.

Mr. Mancini: Mr. Chairman, basically I requested earlier today that the committee be provided with the admonishments rendered after they had reviewed decisions that were appealed to the Health Disciplines Board. I refer the committee back to the board's 1983 annual report, specifically to table 1, where under the heading Disposition of Complaints we see a list of items, the first being "confirmed decisions," then "referred back to colleges." Under that we see the word "admonishment," meaning some type of disciplinary action was requested. I believe for the committee to have an overall view of what type of disciplinary action is taken by this board, we should see each case the board sent back to the College of Physicians and Surgeons of Ontario.

I further requested that the other information under the headings "further investigation," "discipline hearing" and "with comments" be tabled with the committee when the board was able to get that information. There was some concern they could not get all that here today.

I want to see this that so the committee can get an idea of what type of disciplinary action is taken under what circumstances. I understand we are going to get information with the names of individual patients, doctors and hospitals struck out. Then we will decide as a committee whether we want to have the same data with that information as it was originally. I think that covers it.

Mr. Chairman: How many of the six or eight do you have, Mr. Mackenzie?

Mr. Mackenzie: Mr. Chairman, the only problem is we have not had an opportunity to duplicate them. I believe we have before

us a copy of each decision in expurgated form as it relates to those who were admonished, required further investigation, were sent to discipline, or simply had comments. I am prepared to turn these over the clerk at this point.

Mr. Chairman: Thank you.

Mr. Mackenzie: I would point out that in order to do this in an expeditious fashion, since we did not have much time, on the back of the pages we have put an "X" through something which is another decision. It is just crossed out.

Mr. Breaugh: I was just going to request of the chairman that we take these documents in confidence, in whatever form they are, so they are not tabled as a matter of public record. I have no idea what they are, so perhaps it would be wise to do that as a precaution.

Mr. Mackenzie: I had some advice from counsel over the noon hour in relation to unexpurgated material, but perhaps in view of the way the question was just formed now it is not necessary to go into that.

Mr. Chairman: Fine, thank you. Mr. Breaugh, will you explain that a little further?

Mr. Breaugh: Normally when we receive a submission by someone it becomes part of the record or can be read into it. In other words, it is a public document when somebody hands it to us. Since this may or may not involve material that perhaps should not be made available to the public, I would like it clear that the committee receives it in confidence and does not mean to publish it as part of Hansard or do things of that nature. In other words, I would like to see the material before we start bringing it up and showing it around.

Mr. Cureatz: That is agreed.

Mr. Chairman: Yes, that is fine. The copies we are getting are expurgated. These are not photocopied, I take it.

Mr. Mackenzie: If it would be helpful, I would be prepared to go through some or all of these, hand them out as I do so, and explain what we did by way of admonishment and discipline.

Mr. Chairman: Is it possible for you to take the first two or three and get the others photocopied as we go, and then we can reverse it when you hit those ones?

Mr. Mackenzie: Do you want me to photocopy them?

Mr. Chairman: No, the clerk will do it. We will give you the first two or three so that you can start reviewing them while we photocopy the others.

Mr. Mackenzie: Would you like me simply to review some of these decisions?

Mr. Chairman: Yes, please.

Mr. Mackenzie: I will not read them verbatim because you will have that opportunity in a few moments. An example of a case where the matter was returned for admonishment is a review relating to the Royal College of Dental Surgeons of Ontario. Briefly, the complainant lodged a complaint with the college. She alleged that oral surgery performed by a doctor was unsatisfactory and that a portion of a root was left, causing great pain for more than six days and eventually resulting in surgery for the removal of the offending root chip.

She told the board she had attended the doctor and she went through the problems of her complaint. She had been suffering from a toothache and the doctor thought the tooth should be extracted. She had thought that during the period she was away from her job she was being paid by her employer, but her absent time was deducted from her sick leave. She felt that was wrong and blamed the doctor for that. She said that since the doctor was responsible for her dental problem, she felt he should be financially responsible for the time deducted from her sick leave and for her expenses for dental treatment.

The board reviewed all the items. She had contended the doctor should be financially responsible for the time deducted from her sick leave and for her expenses. Neither the complaints committee nor the board have the remedial power to award costs. However, the board believed the doctor should have been more responsible in his attitude and it recommended to the college that the doctor be requested to attend the college to be admonished for his treatment of the lady.

Mr. Mancini: When a situation such as that occurs and a doctor is requested to attend the college for admonishment, what form does that take?

3:20 p.m.

Mr. Mackenzie: First, if it is only a request from us, there is no requirement to do it. More often than not, the board will require--it can make a recommendation under one section of the act or a request under the other. Where they are required to attend in person, they are brought before a complaints officer of the college and the complaints officer reviews the treatment of the patient with specific reference to those areas where the board found a weakness. He admonishes them to be careful that it does not happen in the future and reminds them of the seriousness of such an offence taken to the point where it could lead to a discipline proceeding.

Mr. Mancini: In this case we are to assume that the dentist did go in for his interview with whatever officer was in charge of the hearing and he was told to be more careful in the future.

Mr. Mackenzie: That is correct.

Mr. Mancini: And the lady never did get any type of retribution?

Mr. Mackenzie: No. Nor is it, as I am sure you understand, the function of our board to award retribution.

Mr. Mancini: Yes, I understand that function very well. As you state, you cannot order that type of retribution, but do you ever encourage retribution?

Mr. Mackenzie: Interestingly enough, in the field of dentistry it happens a great deal that the complaints committee itself will try to mediate and it equally does not have that right. Often, the complaints we get, even though they are technically directed at a misconduct suggestion, are really directed to the fact that mediation was not in their minds sufficient. The answer to your question is, we do get them in an indirect way and we do attempt, where possible, to find a solution satisfactory to everyone.

Mr. Mancini: So that was one of the admonishments we were talking about earlier.

Mr. Mackenzie: Yes. Perhaps another admonishment; let us go to a discipline matter. This is a dentistry matter--

Mr. Chairman: Excuse me, perhaps we will take these one by one. Mr. Breaugh has a question on that.

Mr. Breaugh: Just on the case you mentioned, the effect of the whole process is that you cannot and do not take any disciplinary action yourselves.

Mr. Mackenzie: That is correct.

Mr. Breaugh: You make a recommendation to the college.

Mr. Mackenzie: Or a requirement.

Mr. Breaugh: What follow-up is there on what the college does with your findings?

Mr. Mackenzie: We do none. The board is functus once it has come to a decision. Most of the colleges are pretty good at letting us know that they followed our requirements.

In respect to discipline, the only way we know that a matter has gone to discipline is that we receive the quarterly reports of the colleges. At this time there is no procedure to allow the board to monitor the fact that what is supposed to be done is being done. We have a way of finding out and we exercise that because we feel it is important that the college does follow through, but there is no formal procedure.

Mr. Breaugh: Even in an informal way, could you comment on whether the college is paying any attention to your findings?

Mr. Mackenzie: Yes, sir. As I think I said this morning, I can think of no instance in a requirement where the college has refused to do what the board has required. There was an instance where there was a requirement for an admonishment, the terms of

which were contraindicated in medical terms. The complaints committee met with us on that to explain why the particular admonishment would be wrong in medical terms, and we revised our admonishment to fit that.

Other than that, to my knowledge, in every instance where we have required, they have met those requirements and, with perhaps one or two exceptions on recommendations, have met those requirements. If the board found its requirements were not being met, it would take the necessary steps to see that they were.

Mr. Breaugh: I am a little perplexed here. You say that you have no means and no real jurisdiction to monitor, and yet without hesitation you say that they always follow your directions.

Mr. Mackenzie: Because we get a letter from the complaints offices of the college saying that re such-and-such a decision, the committee has admonished Dr. Jones, or whatever. All I am saying is there is no requirement under the act for them to do that. They do write to us.

Mr. Breaugh: To my mind, it would follow that if you make a decision and they take some action, the person who initially lodged the complaint won, in some sense. I would like to know how he or she wins.

Mr. Mackenzie: Two things happen. First, if it is simply an admonishment, we simply put in our decision that so-and-so is admonished and that is all the complainant knows, that the doctor is going to get admonished. They are not invited to see the spanking, so to speak.

Mr. Breaugh: Are they invited to receive the cheque for damages?

Mr. Mackenzie: There are no damages.

Mr. Breaugh: This is kind of a strange--

Mr. Mackenzie: Perhaps I could just finish the question.

Mr. Breaugh: Yes.

Mr. Mackenzie: With respect to sending it back for further investigation, if the committee continues further, it is then required to make a new decision. In making a new decision, the time limit for appeal starts all over again, so a complainant has the ability to ask: "Have they made a decision? I do not like that one either." Then off it goes back to the Health Disciplines Board.

Mr. Breaugh: Okay. Let me try to get back to the person who made the initial complaint in this example. I have a funny expectation that, having gone through the process once, and the board having said something was wrong, the college should do something about that. I would anticipate that the college would encourage that physician to make some kind of a settlement with

the complainant. Do you have any knowledge of whether those things happen?

Mr. Mackenzie: Yes, sir. I believe they do happen, but that is outside of the process we are talking about. You are quite right. We get a number of complaints, especially in dentistry, where what the complainants are really after is a refund.

Mr. Breaugh: Yes.

Mr. Mackenzie: We cannot deal with that. All we can deal with is whether or not Dr. Jones ought to be disciplined in any way for his treatment of her, and we do deal with that. But we can not say, "You ought to get your money back." That is not within our purview.

Mr. Breaugh: That is part of our problem.

Mr. Mackenzie: We are not a mediation committee.

Mr. Breaugh: Yes. That is part of our problem here. The public perception of the review board is that it is a place where they can take their complaints and the board will do something. The reality is the board does not have the power to do anything.

Mr. Mackenzie: All we have the power to do is to ensure that a member of a profession is made to account to a discipline procedure for his actions, if such a procedure is warranted.

Mr. Breaugh: You have said to us that you are pretty confident the colleges do not ignore you; they do respond. Are you pretty confident that people are satisfied with that response, in other words, this complainant? For example, do you have any knowledge that the complainant received some kind of a settlement?

Mr. Mackenzie: No, sir. I have to say I am not confident they are satisfied, because often a complainant comes before our board for redress he ought not to expect from our board. From that point of view, they do not get what they want in many instances, especially in dentistry, because the real issue in dentistry is they had to pay for a bridge which does not fit properly. It is more of a consumer-oriented issue than one would get in medicine. Let us put it that way.

Mr. Breaugh: We have a process going here whereby if you are unhappy with the work of a dentist, you complain to the college. Then the college does or does not do something about it, and you complain further to the board. Having won the case then, you really have not got anything. Now you can go off to court and sue. Is that right?

Mr. Mackenzie: Really and truly, if it is a matter of money, it is usually a small claims matter.

Mr. Breaugh: Right.

Mr. Mackenzie: But, again, our purpose is simply to determine grounds for discipline of a professional.

Mr. Breaugh: Do we have any knowledge of whether the decisions reached by your board are useful to litigation or in small claims court?

Mr. Mackenzie: No, sir. I would not be at all surprised if they were used, but I do not know that for a fact.

Mr. Breaugh: Do you have any follow-up studies which would monitor the process where the board made a decision, referred it back to the college, the college did this, this person subsequently sued the guy, or went to small claims court, and finally got some satisfaction?

Mr. Mackenzie: No, sir. Again, our mandate is to make sure the college did not let a dentist off the hook when there was evidence of misconduct and, having come to that conclusion, we do not have a mandate to take it further.

Mr. Breaugh: It sure is a genteel hook we are holding on to here.

Mr. Chairman: Mr. Mackenzie, if those are all the questions on that matter you have outlined, perhaps the next one would be another case involving a dentist. It is Mr. X, complainant--the X-ed out rather than the black lines and it has the number 14 at the top. Can you identify that one? This photocopy is also involving a dentist.

Mr. Mackenzie: I do not think I have it here, sir, having given it away to be photocopied.

Mr. Chairman: Perhaps we can keep some order and deal with the dentist first, and then go to medical. Do you now have the one that has the number 14 at the top?

3:30 p.m.

Mr. Mackenzie: Yes. This complaint is one we get quite often. The wording a professional can use to describe his practice is very carefully defined in the act. For instance, if you have X number of dentists, you can be a clinic. If you have fewer than that, you can only be a single dentist. We often get complaints from other professionals who are complaining against their peers for using terms they believe they ought not to be using under the act. This review relates to that matter.

In this case, the board thought a professional fight was being carried on at the expense of the process, and said so as well as it could, but it found that the strict language of the act was not being complied with by the complainant, which is why the bottom-line paragraph returned it to the complaints committee.

Mr. Chairman: Are there any questions on this?

Mr. Cureatz: It should have read "dentist" instead of "dental office."

Mr. Mackenzie: That is right. That was the entire substance of it.

Mr. Chairman: The next one is headlined with the number 91. It also involves a dentist.

Mr. Mackenzie: The dentists are the most boring ones, so we should get rid of them first.

Mr. Eichmanis: Could I ask you a question? I notice at the top the number of members of the board who sit seems to vary from case to case. What is your normal practice with respect to how many sit on each case?

Mr. Mackenzie: We normally sit with the full board, which is up to seven people.

Mr. Eichmanis: There is one here where it sits with only three.

Mr. Mackenzie: You will note at least a couple where there were panels. There was a time when the board's backlog of cases was more than I like it to be. I broke the board into panels to catch up on that backlog.

Mr. Chairman: Have the members all had a chance to read the one that starts with the number 91 at the top? Are there any questions on it?

Mr. Breaugh: The only question I would raise would be about the findings. Pardon me for asking, but what does it mean? What were your findings in this case? You admonished him for poor record-keeping.

Mr. Mackenzie: Our findings were that the records were not up to standard. I am now talking from memory; you will have to understand that. I am just going from the sense of what I read here.

We would have found that his record-keeping was not at the standard it should have been. We probably would not have been satisfied with his explanation in relation to diagnoses of the periodontal disease, so we would have wanted his college to review with him that particular part of his practice.

Mr. Breaugh: The difficulty I am having is that here is someone who has complained about the dentist, and it seems to me that the nature of the complaint is pretty straightforward. It is going to cost her \$18,000, she thinks, because of neglect on the part of the dentist. So I understand the complaint fairly well.

What I do not understand is that, this complaint having been made, your findings are about his record-keeping. I do not have any complaints here about his record-keeping. I have seen some

weak disciplinary action, but you are not saying that he did not diagnose or that he did not recognize; you say you want to discuss the reason for his not diagnosing the extent of periodontal disease. Someone raises the complaint that the dentist is not doing his job and your findings are that he did not keep his records well enough.

Mr. Mackenzie: I think our job is twofold. It is not just to decide whether the committee came to a proper conclusion; it is also whether the investigation is properly carried out. Obviously, the board did not feel that his treatment of this lady was sufficient to justify a charge of professional misconduct. We did find some areas of his practice in relation to the treatment of this lady that we believed ought not to be brushed over, so we brought them to his attention through a formal procedure instead of just not dealing with them because overall he was not guilty of professional misconduct.

Mr. Breaugh: It is as if the complainant asked one question and you answered a totally different question.

Mr. Mackenzie: But, in effect, the board found that his overall treatment of her was not a matter of professional misconduct. It did find some things wrong and it raised those points with the college; it did not just ignore them, because overall he had not let the standards down.

You might have been more satisfied if we just made that as a statement and confirmed it, but we think we are acting in the public interest by pointing out the shortfalls where the shortfalls exist.

Mr. Breaugh: Just for interest's sake in this particular case, I do not imagine that the person who complained was very well satisfied by your decision. Am I wrong?

Mr. Mackenzie: I would have no way of knowing.

Mr. Breaugh: For the life of me, I do not understand why we have an appeal board here. It does not know whether people are happy or unhappy; it does not know what happened with the end result of it. It seems to be enough to arrive at a decision of some kind.

Mr. Mackenzie: What we do know is the one thing we are charged with, and that is whether or not a college, in disposing of this complaint, disposed of it properly.

Mr. Breaugh: Okay.

Mr. Cureatz: Mr. Mancini and I were talking. The board should have greater authority. I feel frustrated, as you do. But let us face it, the complainant is not going to be happy with that decision.

Mr. Breaugh: What I am concerned with is that it confirms my hunch that the purpose of the Health Disciplines Board

is to hear a complaint. It certainly is not to do anything about a complaint, but rather just to hear it. That is a good technique, I suppose, but--

Mr. Cureatz: It is just to provide an appeal process so you feel as if you have your final day outside the so-called body that is regulating itself; and you do, but it does not have the authority to do much else.

Mr. Breaugh: You can lodge a complaint, but the board that hears the complaint cannot do anything about it.

3:40 p.m.

Mr. Cureatz: All they can do is decide whether the college, be it the dental or medical college, has carried out the investigation in a proper manner.

Mr. Breaugh: It can pass an opinion on it, but it cannot do anything about it.

Mr. Mackenzie: Yes, it can.

Mr. Cureatz: That is right. You can if you feel the college has not carried out a proper investigation.

Mr. Mackenzie: Our responsibility is to review the decision of the college and determine whether it came to the proper decision. If we feel it did not, we can do a number of things, one of which is to require a discipline hearing. I am not for a moment suggesting we have a lot of power because we do not, but there are certain things we can do. I think another decision will give a better example of that.

Mr. Chairman: You might bring it up next. Mr. Mancini would like to question you further about this one.

Mr. Mancini: I am not concerned that you made a recommendation concerning the gentleman's bookkeeping. If you find something wrong, I think you should point it out.

Mr. Mackenzie: It is not bookkeeping; it is record-keeping and there is a substantial difference.

Mr. Mancini: Thank you for the correction. What concerns me is that you agreed with the complainant that a proper diagnosis had not taken place as the extent of her gum disease increased; you partially agreed with that. However, from reading the decision, and if I understand it correctly, the only thing that will happen is the person will have a review of the matter with an officer from the Royal College of Dental Surgeons of Ontario. Is that it?

Mr. Mackenzie: That is correct.

Mr. Mancini: You also stated that you do have the power to make these colleges enforce discipline. Is that basically what you said?

Mr. Mackenzie: No, sir. We have the right to require. For instance, on this particular decision we could have acted under another section of the act. We can refer a complaint to the complaints committee under clause 10(1)(b) and recommend that Dr. So-and-So attend. We can and more often do return it to the complaints committee under clause 10(1)(c) and "require" it.

We can require action such as an admonishment, but when it comes to disciplinary action in the legal sense of that word in reference to a discipline committee, we can only require that a hearing be held. The matter of conviction rests with the discipline committee.

Mr. Mancini: In this case you referred to clause 10(1)(b) and recommended that the doctor attend the college for the purposes of being admonished for his poor bookkeeping

Mr. Mackenzie: Not bookkeeping, I am sorry.

Mr. Mancini: Poor record-keeping. You then went on to mention not diagnosing the extent of the gum disease. I was led to believe that when the person went to the college, the admonishment would be, "We want you to keep your records more up to date and we want you to be a little sharper when you see some of these gum diseases." Is that it? Then the doctor says, "Thank you very much and I hope I will not see you again."

Mr. Mackenzie: I would go further. Because of the power the college has in relation to his ability to practise, a requirement to meet with the college to discuss the scope of his practice is a very serious matter.

Mr. Mancini: You are saying any meeting between a doctor and a college--

Mr. Mackenzie: Formal meeting.

Mr. Mancini: --a formal meeting is very serious.

Mr. Mackenzie: Yes, sir.-- It relates to his ability to practise.

Mr. Mancini: Although I accept that as being serious, I still believe the Legislature has perhaps not given you enough authority, because while it may be true that this may be a very serious situation for the doctor, the individual person should be allowed some redress, in my view.

Mr. Chairman: Mr. Mackenzie, just one question flowing from that: in these quarterly journals, for example in this latter case, would it say Dr. Jones has been admonished, and name him? Would there be any record of that?

Mr. Mackenzie: First, the only matters published are those which go to the discipline committee. Second, as I understand it, the discipline committee normally holds its tribunals in camera. Third, they normally only publish the names

of those who are convicted and do not always do that, although they usually do.

Therefore, if Dr. Jones goes to the discipline committee and is found guilty, then the circumstances of the evidence, the finding of the committee, and the name of the doctor are usually published. Although I have seen circumstances where there has been a finding of professional misconduct and the doctor's name is not published, it is their normal practice to do so. However, if there is a finding of not guilty, then we have to read pretty carefully to make sure it is one of our cases, because there are no names mentioned.

Mr. Mancini: Sir, what is the difference between being guilty and being admonished?

Mr. Mackenzie: I was afraid someone was going to ask that.

Mr. Cureatz: I would think--

Mr. Mancini: Excuse me, Mr. Cureatz. We will get the answer to that.

Mr. Cureatz: I was just helping.

Mr. Mackenzie: Let me put it this way. Strictly speaking, only a discipline committee can discipline. However, if that and that alone were the case, then there would be many instances of minor infractions, grey areas or whatever you want to call them, that would not be dealt with because they would not be serious enough to go to a discipline committee and they would have nowhere to fall.

For that reason, early in the life of the Health Disciplines Board we met with the colleges to agree upon a group of words we could use which would not fall strictly within the disciplinary language but, at the same time, would deliver a message to a physician, or a dentist, or whatever, that there was some substance to the complaint to which they ought to pay attention. Such words as "caution," "advise," and "admonish," are words we use which fall short of the technical definition of discipline, and still allow us to find fault.

Mr. Hennessy: Just looking at your track record, I can see not many people get a penalty. This is like an old-timers' hockey game where no one gets one. I have seen some things here that, if a politician did them, he would be hung high.

Mr. Mackenzie: Well, lately anyway.

Mr. Hennessy: Regardless of lately or not, I am just saying you get someone here, he did not check bleeding, and you give a slap of the hand. You are paying good money for this service. How many people have you sent before the committee of the total people you have had before you?

Mr. Mackenzie: We return about 15 per cent of our cases, Mr. Hennessy. Again, I caution that in evaluating that statistic, you have to remember we are an appeal board. We are looking at cases that have already been decided. I have had some opportunity to look at the statistics of an appeal court, and our figure is at least as--

Mr. Hennessy: I am not criticizing you; I am getting at the people here, when the the doctor did not give a damn if the patient was dead or alive. His only concern was his overdue bill.

Mr. Mackenzie: Part of my problem is we have a quasi-judicial function to fulfil. We can only refer a case when we believe there are grounds under the act for a discipline proceeding. That is why we are pleased we have the ability to make these comments and ask for cautions and admonishments, because it gives us the ability to do exactly what you have said: to say to these doctors, "You have to watch that."

3:50 p.m.

Mr. Hennessy: Do you not think, sir, it is about time they looked at a procedure in which you could get a tougher tribunal? If a plumber or an electrician makes a mistake and goes before his board, he can be in trouble. You are dealing with a person's health and that person can die. If there is a financial mistake, all you lose is money, but if there is a judgement call such as this, God forbid, the person can pass away.

I find it very funny that they refused to look at the person who was bleeding and did not even mention that. All the doctor was concerned about was the bill.

Mr. Mackenzie: I am not sure what you are reading, sir.

Mr. Hennessy: Number 9 that I have in front of me, on page 8.

Mr. Chairman: Mr. Hennessy, we are not down to that one yet.

Mr. Hennessy: I wanted to bring it up in case the other guys beat me to it. When some of you guys start talking, you never stop.

Mr. Chairman: Mr. Mackenzie, would you like to lead off with the next one that you think will prove various points?

Mr. Mackenzie: I was simply going to say, sir, that there is a medical case that looks like this, if that helps. It is a nonmedical matter.

Mr. Chairman: Is that the one dated Thursday, August 25, 1983?

Mr. Mackenzie: Yes, that is correct. It has to do with the Ontario Medical Association schedule of fees.

Mr. Pollock: Is the OMA schedule of fees different from Ontario health insurance plan fees?

Mr. Mackenzie: Yes, sir.

Mr. Pollock: I am always a little confused about that.

Mr. Mackenzie: My only purpose in bringing this to your attention is that someone asked this morning if a matter of concern came before the board how the board shows that concern. This is an example of that.

Mr. Breaugh: In this example we are into the old argument about what is an approved fee and whether you have to give notice. You are simply confirming the fact that a doctor does not have to charge according to anyone's fee schedule and has no legal obligation to give you notice if he is going to overbill.

Mr. Mackenzie: In the penultimate paragraph, as the law stands, as we understood it, we are saying that was fine, but there is the problem of averaging, where doctors do a number of procedures and get under the line by averaging their fees. We saw that as a potential problem that ought to be dealt with and our final paragraph is a way of bringing that to the attention of the college.

Mr. Breaugh: If I recollect properly, this person was not informed in advance and the physician billed for services he personally did not provide and billed outside the fee schedule. Even if all those things were true, nothing can happen.

Mr. Mackenzie: If they are all true,

Mr. Breaugh: Excuse me, I thought you said rather clearly that all those things were true.

Mr. Cureatz: The billing was confusing. At the top of page 2, halfway through the paragraph, the board also learned that some visits billed by the doctor may have been made by a resident or other medical staff of the hospital. I am not sure if that makes--

Mr. Breaugh: One has to learn the language of the medical profession. When the college says that billings in his name were ultimately his responsibility, translated into the English language that means he billed for services he did not provide, but he was the doctor of record.

Mr. Mackenzie: If I recall the case, there was an ongoing series of treatments for a specific ailment. While some of the charges for a specific procedure exceeded the OMA schedule, when you added up the treatment, the bill was actually lower than the schedule on average.

Mr. Breaugh: Because they averaged it.

Mr. Mackenzie: Yes, but we were concerned about the method some physicians were apparently using to justify their billing.

While we could find nothing to justify a charge of professional misconduct in this instance, we felt it was an issue that should be brought to the attention of the college. Indeed, as a result of this, my understanding is that the legislation has since been changed.

Mr. Breaugh: I am not sure about that.

Mr. Chairman: Are there any other questions on this one? If you want to, take another one--the one that is headed page 8, regarding a doctor; Monday, January 24, 1983. Is that the one?

Mr. Mackenzie: I believe so.

Mr. Breaugh: The best line in here is on page 10. "When he contacted Mr. X concerning his unpaid account..." It is interesting to note when the physician shows great concern, which is what Mickey was talking about before. The first indication of concern is when the guy did not pay his bill. It is worked in there rather nicely so as not to reflect any bias on the part of the board towards the physician.

Mr. Mackenzie: Mr. Chairman, I would just make one comment as a result of what Mr. Hennessy has said, and that is you must understand the reason the board contains more than one member is that often there is disagreement about the outcome of a specific issue.

I can tell by reading this one that there was an obvious difference of opinion among the members of the board as to whether this matter should go to discipline and I think that is quite clear in the reading of it. The solution that was finally arrived at is obviously a middle solution.

Mr. Mancini: So what you have done in this instance, as compared to the other two or three cases we have reviewed--

Mr. Cureatz: This is Mickey's case.

Mr. Mancini: I am sorry.

Mr. Chairman: No, Mr. Mancini has the floor at this point and then Mr. Hennessy.

Mr. Mancini: So the only difference in this case compared to the other three cases is that you are requiring the complaints committee to have an interview with the doctor instead of asking them.

Mr. Mackenzie: In addition to that, in the decision of the complaints committee, they had cautioned the doctor but they had not called him in. They just said in there, "Look, you should have done a certain thing." What this decision says is that was

not enough, he should be required to come before them and he should have it carefully explained to him where he was deficient. That is the difference.

Mr. Mancini: Between the ones we have already described.

Mr. Hennessy: You mentioned your decision here and the fact it was not referred to the discipline committee. You just gave him a tap on the hand and said he did not do the right thing and the next time a patient was bleeding to make sure he looked at it.

My God, the man is a professional man and has a college education. I used to coach hockey, and maybe you gave not a pat on the hand but a kick somewhere else if he did not understand.

I am not a medical person, but when someone's life depends on this item, and when he is bleeding, surely to God the physician should not have to be tapped on the hand and told, "Now you did the wrong thing." Has he got his medical degree or not? Things like this make one wonder.

Mr. Mackenzie: Mr. Hennessy, it is a judgemental factor as to when there is enough information to justify the charge of professional misconduct. I think it is quite clear in this case that some members of the board felt there was and others did not. I will leave it for you to guess what I thought.

4 p.m.

Mr. Hennessy: If the person had died, you would have given him a good funeral, but still sent him the bill before you buried him. It may seem comical, but I have had my fill of doctors and some of them have only the dollar as their main interest.

You get a little tired when you hear something like this come up and nothing is done. If a lawyer did that he could be disbarred. If you are dealing with people's lives, I think there should be something stricter, with more enforcement. You should not just pat him on the hand and say, "You made a mistake." The next time that person could die.

Mr. Chairman: Are there any other questions on this case? No? Carry on. Another one, Mr. Mackenzie?

Mr. Mackenzie: Perhaps the one with number five on the top would be one to look at. It is a matter that went to the discipline committee. It is dated Wednesday, January 12, 1983.

Mr. Chairman: I do not have it.

Mr. Mackenzie: Are copies still being made of these? They may not be out yet.

Mr. Mancini: Shall we move to another one?

Mr. Mackenzie: I do not know what you have. That is my problem.

Mr. Eichmanis: There is one at the top of page 52. The decision involves the doctor's practice being inspected and monitored.

Mr. Mackenzie: Do you have one with page 50 on the top?

Mr. Chairman: No.

Mr. Mackenzie: Those are discipline matters, and to get a proper perspective, you should look at them as well.

Mr. Chairman: I do not have one with 50 on the top.

Mr. Mancini: Let us look at the one that is dated Wednesday, June 15, 1983.

Mr. Chairman: Does it have a number on the top?

Mr. Mancini: No.

Mr. Eichmanis: June 15?

Mr. Mancini: Yes. Wednesday, June 15.

Mr. Chairman: That is the complaint against the registered nurse?

Mr. Mackenzie: I have that one.

Mr. Mackenzie: Is this the seven-page decision?

Mr. Chairman: Yes. This appears to be one head nurse advising on the termination of employment of another nurse.

Mr. Mackenzie: This is an interesting one in the sense that the appellant, if I am not mistaken, was the complainant. Somebody complained against the nurse. The complaints committee of the college found some faults with her. It did not send her to discipline, but it admonished her for those faults. She did not think she deserved that admonishment and she appealed that decision to our board as being unfair. Our board actually sent her to the discipline committee.

Interjection.

Mr. Mackenzie: Not by us. What happens, Mr. Mancini, is that under the nursing portion of the Health Disciplines Act, when an employee dismisses a nurse, he is required to inform the college of that dismissal, and that dismissal is treated by the college as a complaint.

Mr. Mancini: Are we to understand that the hospital fired her on the basis of your decision?

Mr. Mackenzie: No, sir.

Mr. Mancini: Partially?

Mr. Mackenzie: No. I have not read this in detail, and I will if I need to, but my understanding is that the first action was that she was terminated. The second action was that a complaint was registered with the College of Nurses of Ontario as a result of her termination. The third action was that the complaints committee of the college treated that as a complaint and rendered a decision. The nurse was not satisfied with that decision and appealed it to our board. Our board found that not only was the complaints committee correct in what it said, but also that it had not gone far enough, that it had not sent her to the discipline committee.

Mr. Chairman: Are there further questions on this? What would someone else like? The clerk is bringing around another nursing one. We would like to deal with that. It had a seven-man board. There is no number at the top. It was Tuesday, July 26, 1983.

Mr. Mackenzie: Could you give me a copy, too?

Mr. Cureatz: Mr. Chairman, before we get into this, are we concluding at 4:30? Are you planning on getting through all this? What is the approach?

Mr. Chairman: It is entirely up to the committee when we end.

Mr. Cureatz: We have covered a few dentists, a doctor and a nurse. Are there other kaleidoscopic--

Mr. Mackenzie: It is difficult for me to tell because they have all been taken away from me, but I think you are getting a fairly good cross-section. You should probably deal with one or more true discipline matters.

Mr. Cureatz: That is fine. I would rather get a synopsis.

Mr. Mackenzie: I mean matters that were referred to discipline. This one is really very much like the previous one.

Mr. Mancini: Basically what you are telling us is that we will never see anything more serious than your requiring one of the colleges to have a formal hearing with someone who is going to be--

Mr. Mackenzie: That is the zenith of our power.

Mr. Mancini: That is the zenith of your power. Has any doctor ever lost his or her licence after having the complaints committee of the college look at the situation after you said it should do so?

Mr. Mackenzie: Do you mean after the discipline committee has looked at it?

Mr. Mancini: Yes.

Mr. Mackenzie: I believe they have.

Mr. Mancini: How often does that happen?

Mr. Mackenzie: I do not know. It would not be a great number of times, but I believe it has happened.

Mr. Mancini: I note the nurse was fired. To be fair, I did not read the seven pages but I note she was fired. I note the chagrin that Mr. Hennessy commented on, where a patient was left bleeding and the doctor got an interview.

Mr. Mackenzie: The difference is that the firing was not done by this board.

Mr. Mancini: I understand that. We still must have some kind of weight in the medical system to treat all the people involved equally, or it has to appear that way.

Mr. Chairman: I guess we could look at a couple of others.

Mr. Breaugh: There is one I would like to go through. It is dated Tuesday, March 8, and at the top it has the number 59. It seems to indicate a problem of misdiagnosis of rather serious consequences. The woman went to her family doctor. She had ceased to menstruate and the doctor diagnosed it as one thing and indicated she was not pregnant. Subsequently she found out she was pregnant. In the findings of the board, it is put in rather gentle terms. If I can go to the last page, page 61--

Mr. Mackenzie: I do not have a copy of it in front of me.

4:10 p.m.

Mr. Breaugh: It is at the top of page 61. Your final paragraph states: "The board believes that the written admonishment contained in the decision of the complaints committee was not sufficient under the circumstances. The board, therefore, refers the complaint to the complaints committee under clause 10(1)(c) of the Health Disciplines Act and requires the committee to request Dr. X to attend the college in person to orally receive the written admonishment of its decision and specifically to receive an admonishment with respect to his treatment of Mrs. X."

Excuse me for saying so, but it seems to me the case is a serious one and all you have recommended is that he attends the board in person and receives his admonishment orally.

Mr. Mancini: You have already been told that the zenith of their power is to tell the colleges to have an interview.

Mr. Mackenzie: No. One of the choices open to us in this instance was to refer the matter to a discipline hearing. We could have ordered the complaints committee to lay a charge of professional misconduct and have a hearing of the discipline committee. It is a judgement factor.

One of the reasons our act contemplates having the complainant and the respondent come before us, when the act does

not contemplate that at the college end--in other words, the college has no requirement to bring the complainant into the process of its considerations--is so we can make a judgement based on credibility, based on evidence and based on what we have in front of us in regard to what happened.

Very often in such cases we have a split decision of the board as to what the situation was. My recollection of this one is that the doctor involved was a doctor whose record was such that, on balance, the board did not think a disciplinary procedure was in the best interest of resolving the problem. In addition, the board was of the opinion that to this doctor the weight of being admonished by his colleagues was so heavy that it was a sufficient punishment. You would have to be there to see it.

Mr. Breaugh: I guess I would. I wonder how somebody who had been told by her physician that she had secondary ovarian failure, or premature menopause, and had a tubal ligation and then found out she was 14 weeks pregnant would feel if she heard that the end result of her complaint is that the doctor is called in and told verbally what the written admonishment is.

Mr. Mackenzie: I am not particularly anxious to defend that position, simply because it is a judgement situation. You have to be there to see it. Misdiagnosis on its own is not necessarily professional misconduct. Professional misconduct comes into it if there is evidence that the doctor clearly was practising below the standards expected in the province by not seeing things he ought to have seen or not doing things he ought to have done.

Mr. Chairman: Are there any other questions on that?

There was one case that came to my eye about a dentist slapping a child.

Mr. Mackenzie: Yes.

Mr. Chairman: It starts at 37, at the top of the page.

Mr. Mackenzie: Yes, this one is an example of--

Mr. Cureatz: I do not even know why he bothered with the child. It boggles the mind. A two-and-a-half-year-old child.

Mr. Mackenzie: There is a section of dentistry that deals with children with problems. This raised the whole issue of one of the methods--

Mr. Cureatz: Children with problems or children who are problems?

Mr. Mackenzie: Children who are problems, maybe because they have problems. There is a method for dentists to deal with these things. One of the things they sometimes do is use physical force. The question before our board was whether that was a legitimate reason for doing it. Our board found it was not and ordered a discipline hearing.

Mr. Mancini: So you made a decision even though the doctor and the patient failed to show up for the hearing?

Mr. Mackenzie: Did nobody show up?

Mr. Mancini: Yes. It says neither Mrs. X nor the doctor attended.

Mr. Mackenzie: You should understand that we have before us all of the documents and things that were before the complaints committee. We have the doctor's response. We have the patient's response. We have what other experts might say if they sought that expert advice. Where the parties do not show, we simply proceed with the review.

Mr. Mancini: Did you overturn the decision of the college?

Mr. Mackenzie: We certainly did.

Mr. Mancini: Even though nobody was there.

What do you do when the patient shows up for the hearing and the doctor does not?

Mr. Mackenzie: The act give the right of both the patient or complainant and the respondent or the doctor to appear in person, in writing or by agent. Where one shows and the other does not, we listen to the person who is there. If the patient comes alone, which often happens, the patient has the right to state his complaint to the board. If the respondent is not there, most often we will have something in writing from him, which is another avenue open to him.

Mr. Mancini: From his lawyer usually?

Mr. Mackenzie: More often than not it is from the doctor. In the case of the patient or complainant not coming, 99 per cent of the time we have a submission from him as well which was made to the complaints committee.

Mr. Mancini: I just wonder about the professionals not showing up. It is a very important matter and the board should almost request they be there.

Mr. Mackenzie: We have no power to compel. However, whenever our advice is sought, we make it clear it is in the best interests of both the respondent and the complainant to be present. Perhaps from the respondent's point of view, it is more important because a board, when it does not have the answers it needs, is of a mind not to confirm a decision because it does not have the answer.

Mr. Chairman: Are there any other questions on this case? Mr. Mackenzie wished to point one out. It is number 50. It is going around now, and there was one with five on the top that is also being distributed. Those were particular ones--

Mr. Mackenzie: It is a matter that was referred to discipline as is the one on 50. Questions were asked in both those instances. Are we taking the one on page 50 first?

Mr. Chairman: If you wish, yes--regarding a registered nurse.

Mr. Mackenzie: Yes, this is the situation. Look at the second paragraph on the first page. The disposition of this matter at the complaints committee level was a caution to the nurse to be more aware in the future of her professional responsibility to be alert at all times in the critical care area.

If I recall this one correctly, it is a question of where a nurse fell asleep. The lady was on duty in the recovery room. She was sitting in a chair with a blanket wrapped around her and her eyes closed. She was observed by a registered nursing assistant, who went to a registered nurse in the operating room. That nurse came, observed the lady and saw her eyes closed. The complaint was basically that she was sleeping in the recovery room.

4:20 p.m.

The college cautioned the lady on this particular matter and the board, based on what was before it, felt it was a matter of discipline and required that it be referred to the discipline committee.

Mr. Chairman: Are there any others that either the members wish to discuss with Mr. Mackenzie or Mr. Mackenzie wishes to show us as examples of his proceedings, recommendations or requirements?

Mr. Mackenzie: The only other one that I have in front of me that relates to discipline is the one headed page 5.

Mr. Breaugh: Mr. Chairman, I think we have had enough examples here to give us some idea of how matters are dealt with. Quite frankly, I would like a chance to peruse them a bit more.

Some of this might come out when we do write the committee report, and we take these documents in confidence. I frankly have not looked through them; I do not see any reason anyone would be nervous about the disclosure or use of them in the writing of the committee report; so I am assuming it is all right to consider them as documents that have been tabled before our committee and that we can use them as we see fit.

Mr. Mackenzie: Mr. Chairman, inasmuch as there are no identifying factors in the papers you have in front of you, I have no problem with that.

Mr. Breaugh: Fine.

Mr. Chairman: Is that fine with the committee? They were tabled or they were distributed on the original understanding that they were in confidence. Are we removing that confidence?

Mr. Breaugh: Agreed.

Mr. Cureatz: Yes, I think so.

Mr. Chairman: And that is fine with you, Mr. Mackenzie?

Mr. Mackenzie: Yes, Mr. Chairman. In fact, what you have are documents that have already been released to the press.

Mr. Cureatz: I am so pleased that you were hesitant to bring them forward to the committee this morning.

Mr. Mackenzie: No. The problem was not with these documents. The problem was whether or not the committee wanted them with the names in, and those have not been released to anybody.

Mr. Mancini: I read in your annual report that several press releases were published during a certain period of time, and I noted that the names were not released.

Mr. Mackenzie: Yes.

Mr. Chairman: Are there any other questions of the witnesses this afternoon?

Mr. Mancini: I have one last question. I am told that the law society does release the names of certain lawyers when they are found, for lack of a better term, guilty of professional misconduct or something of that nature. Would you be in favour of such a future practice for your board--not in some of the grey areas we have been talking about, but where you make a clear-cut decision that there was malpractice or there was conduct unbecoming of a professional?

Mr. Mackenzie: The law society, of course, should be compared with the college and not with the board. The college, in fact, in most instances where it has had a disciplinary procedure that is equivalent to a disciplinary procedure of the law society also releases the name.

In our particular case the board is dealing with a finding of whether there is evidence for a charge; so quite frankly, I would like to have the ability under certain circumstances. In other words, where the board felt it was really in the public interest that names be named, perhaps we could do that. But in general, until such time as someone is convicted of something or charged with something, the name would not be released.

Mr. Chairman: Thank you very much, Mr. Mackenzie, Mr. Fraser and Ms. Hastings, for coming in front of us. Thank you for your scrambling at noon to get us these case histories.

Mr. Mackenzie: It is our pleasure.

Mr. Chairman: Committee members, I hope you have with you the two documents, which we can go over tomorrow. First, a six-page list--

Interjection: That is just for you.

Mr. Chairman: Oh, just for me. I guess what is being handed out is a single-page group of suggestions for ABCs to review late next summer.

Mr. Mancini: Do you mean after the election?

Mr. Chairman: It could be. If you find some of those a little unexciting, there is another list of six pages that I have that we could take a look at tomorrow. There are perhaps 12 or 15 suggestions on that list that have been put out, and there can be others that can replace those. You could take a look at that overnight and have some idea whether you wish to delve into the long list rather than just that short one.

Mr. Mancini: I would like to have in the Nomenclature Section: Ontario Geographic Names Board.

Mr. Cureatz: I would like to see what the Ontario Economic Council does.

Mr. Mancini: For openers, it would be more exciting than this.

Mr. Cureatz: We could have Jim Breithaupt here from the Ontario Law Reform Commission.

Mr. Chairman: Or the finance committee for the investment of court funds.

Mr. Cureatz: Are we doing this now?

Mr. Chairman: No. You are just taking a look at it. You are taking it home. You are going to use it as bedtime reading and then we will discuss it tomorrow when we go through our report recommendations.

Mr. Cureatz: How many do we get?

Mr. Chairman: It depends. It could be probably about five majors or 10 minors.

Interjection.

Mr. Chairman: Yes, it looks as if we have three already at the top of that list that require us to be outside Toronto

Mr. Mancini: I think we should visit Minaki Lodge. There is a tremendous amount of government funds in that and we have been very critical of it.

Mr. Breaugh: We have already decided to do that.

Mr. Mancini: Have we?

Mr. Cureatz: Yes.

Mr. Chairman: If Old Fort William, James Bay Education Centre and Minaki Lodge are to be followed through, then we may have certain time constraints as to how many we handle in the three weeks.

You can look through that tonight. Is there anything else before we adjourn till tomorrow morning? No.

The committee adjourned at 4:27 p.m.

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